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THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1997 CUMULATIVE SUPPLEMENT

Volume 16

Chapters 113 through 116C

Prepared under the supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 486 S.E.2d 626. For complete scope of annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

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Preface

This Cumulative Supplement to Volume 16 contains the general laws of a permanent nature enacted by the General Assembly through the 1997 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 “from and after 30 days after the adjournment of the session” in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1997 Regular Session affecting Chapters 113 through 116C of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 344, p. 732.
North Carolina Court of Appeals Reports through Volume 123, p. 790.
South Eastern Reporter 2nd Series through Volume 486, p. 626.
Federal Reporter 3rd Series through Volume 116, p. 875.
Federal Supplement through Volume 965, p. 1486.
Federal Rules Decisions through Volume 172, p. 600.
Bankruptcy Reports through Volume 209, p. 549.
Supreme Court Reporter through Volume 117, p. 1864.
North Carolina Law Review through Volume 75, p. 1088.
Wake Forest Law Review through Volume 32, p. 217.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

The General Statutes of North Carolina
1997 Cumulative Supplement

VOLUME 16

Chapter 113.

Editor's Note. — The legislation and annotations affecting Chapter 113 have been included in a recently published replacement chapter.

Chapter 113A.

Editor's Note. — The legislation and annotations affecting Chapter 113A have been included in a recently published replacement chapter.

Chapter 113B.

North Carolina Energy Policy Act of 1975.

Article 1.

Energy Policy Council.

Sec.
113B-3. Composition of Council; appointments; terms of members; qualifications.

Article 2.

Energy Crisis Administration.

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113B-24. Enforcement; penalties for violations.

ARTICLE 1.

Energy Policy Council.

§ 113B-3. Composition of Council; appointments; terms of members; qualifications.

(a) **(For applicability see note)** The Energy Policy Council shall consist of 18 members to be appointed as follows:

(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;
(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;
(3) Nine public members who are citizens of the State of North Carolina to be appointed by the Governor;
(4) The chairman of the North Carolina Utilities Commission, the Secretary of Environment and Natural Resources, the Commissioner of Agriculture, the Secretary of Commerce and the Secretary of Administration or their designees from their respective departments.

(b) Initial appointments to the Energy Policy Council shall be made by July 15, 1975, and each such appointee shall serve until January 31, 1977. Thereafter, the appointed members of the General Assembly shall serve two-year terms, and the appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.

(c) The public members of the Energy Policy Council shall have the following qualifications:

(1) One such member shall be experienced in the electric power industry;
(2) One such member shall be experienced in the natural gas industry;
(3) One such member shall be experienced in the petroleum marketing industry;
(4) One such member shall be experienced in economic analysis of energy requirements;
(5) One such member shall be experienced in environmental protection;
(6) One such member shall be experienced in industrial energy consumption;

(7) One such member shall be knowledgeable of alternative sources of energy;

(8) One such member who, at the time of appointment, is a county commissioner; provided, such member's term on the Council shall expire immediately in the event that he or she vacates office as a county commissioner;

(9) One such member who, at the time of appointment, is an elected municipal official; provided, such member's term on the Council shall expire immediately in the event that he or she vacates office as an elected municipal official. (1975, c. 877, s. 4; 1977, c. 23, ss. 1, 5; c. 771, s. 4; 1979, c. 422; 1981, c. 701, ss. 4, 5; 1989, c. 727, s. 218(80); c. 751, s. 8(15); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 739, s. 10; 1991 (Reg. Sess., 1992), c. 959, s. 27; 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

ARTICLE 2.

Energy Crisis Administration.

§ 113B-24. Enforcement; penalties for violations.

(a) The Attorney General and the law-enforcement authorities of the State and its political subdivisions shall enforce the provisions of this Article and all orders, rules and regulations promulgated pursuant to G.S. 113B-22.

(b) Any person who violates this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 or knowingly or willfully submits false information in any report required herein shall be guilty of a Class 1 misdemeanor.

(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy Policy Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur. (1975, c. 877, s. 4; 1993, c. 539, s. 878; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 878, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

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114-2.4. Attorney General to render opinion on settlement agreements.
114-4.2G. Employment of attorney for the North Carolina Board of Landscape Architects.

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114-10. Division of Criminal Statistics.

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State Bureau of Investigation.

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114-15.3. Investigations of child sexual abuse in child care.
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114-19.1. Criminal history background investigations; fees.
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Article 6.

Office of the Inspector General.

114-40. Inspector General.
114-41. Inspector General; investigations.
114-42. Inspector General; complaints.

ARTICLE 1.

Attorney General.

§ 114-2. Duties.

CASE NOTES

Derivation. — Pursuant to the authority under Article III, section 18 of the North Carolina Constitution, the General Assembly enacted this section, which prescribes the duties of the Attorney General. Sotelo v. Drew, 123 N.C. App. 464, 473 S.E.2d 379 (1996).

Dual Role of Attorney General's Office. — Plaintiff offered no evidence to support the claim that the dual role served by the Attorney General's Office both in representing defendant institution and being legal advisor to State Personnel Commission caused actual bias or unfair prejudice to plaintiff, nor that it created any delay in the disposition of her claims. Dorsey v. UNC-Wilmington, 122 N.C. App. 58, 468 S.E.2d 557 (1996).

§ 114-2.4. Attorney General to render opinion on settlement agreements.

(a) The Attorney General shall review the terms of all proposed agreements entered into by the State or a State department, agency, institution, or officer to settle or resolve litigation or potential litigation, that involves the payment of public monies in the sum of seventy-five thousand dollars ($75,000) or more. In order for such an agreement or contract to be effective against the State, the Attorney General shall submit to the State or the State department, agency, institution, or officer a written opinion regarding the terms of the proposed agreement and the advisability of entering into the agreement, prior to entering into the agreement. The written opinion required by this section shall be maintained in the official file of the final settlement agreement. The Attorney General by rule may delegate to a deputy or assistant Attorney General or to another subordinate the authority to approve settlement agreements.

(b) The Attorney General shall report to the Joint Legislative Commission on Governmental Operations on all agreements entered into by the State or a State department, agency, institution, or officer to settle or resolve litigation or potential litigation, that involves the payment of public monies in the sum of seventy-five thousand dollars ($75,000) or more. (1997-443, s. 20.14(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 20.14(b), made this section effective August 28, 1997, and applicable to settlements entered into on or after that date.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

§ 114-4.2G. Employment of attorney for the North Carolina Board of Landscape Architects.

The Attorney General shall assign an attorney on the Attorney General's staff to serve as advisor to the North Carolina Board of Landscape Architects. The attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. The attorney shall also perform additional duties that may be assigned by the Attorney General. (1997-406, s. 10.)

Editor's Note. — Session Laws 1997-406, s. 11, made this section effective October 1, 1997.

Article 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics.

The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispo-

sitions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General.

(6) To promulgate rules and regulations for the administration of this Article. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1; 1995, c. 545, s. 2.)

Editor's Note. — Session Laws 1995, c. 545, s. 3, provides that this act shall be known as the "Amy Jackson Law".

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to all persons convicted on or after that date, and to all persons released from a penal institution on or after that date, inserted "sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes" in the second sentence of subdivision (2), and added subdivision (6).

ARTICLE 4.

State Bureau of Investigation.

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). The Governor must give the person being investigated written notice that he intends to request a background investigation at least 10 days prior to the date that he requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the Governor has a copy of the notice.

(b) The State Bureau of Investigation is further authorized, upon request of the Governor or the Attorney General, to investigate the commission or attempted commission of the crimes defined in the following statutes:

(1) All sections of Article 4A of Chapter 14 of the General Statutes;
(2) G.S. 14-277.1;
(3) G.S. 14-277.2;
(4) G.S. 14-283;
(5) G.S. 14-284;
(6) G.S. 14-284.1;
(7) G.S. 14-288.2;
(8) G.S. 14-288.7;
(9) G.S. 14-288.8;
(10) G.S. 14-288.20;
(11) G.S. 14-284.2;
(12) G.S. 14-399(e);
(12a) G.S. 15A-287 and G.S. 15A-288;
(13) G.S. 130A-26.1;
(14) G.S. 143-215.6B;
(15) G.S. 143-215.88B; and
(16) G.S. 143-215.114B.

(c) All records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

(d) In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280; 1965, c. 772; 1973, c. 47, s. 2; 1981, c. 822, s. 2; 1987, c. 858, s. 1; c. 867, s. 3; 1991, c. 725, s. 2; 1993, c. 461, s. 2; 1995, c. 407, s. 2.)

Legal Periodicals. — For comment, "You Can't Always Get What You Want: A Look at North Carolina's Public Records Law," see 72 N.C.L. Rev. 1527 (1994).

§ 114-15.3. Investigations of child sexual abuse in child care.

The Director of the Bureau may form a task force to investigate and gather evidence following a notification by the director of a county department of social services, pursuant to G.S. 7A-543, that child sexual abuse may have occurred in a child care facility. (1991, c. 593, s. 3; 1991 (Reg. Sess., 1992), c. 923, s. 5; 1997-506, s. 37.)

Effect of Amendments. — The 1997 amendment, effective September 16, 1997, substituted "child care" for "day care" in the catchline; and substituted "child care facility" for "day care facility or day care home".

§ 114-17.1: Repealed by Session Laws 1995, c. 507, s. 6, effective July 1, 1995.

§ 114-18.1. Information on controlled substances.

CASE NOTES

Cited in State v. Bonds, 120 N.C. App. 546, 463 S.E.2d 298 (1995).

§ 114-19.1. Criminal history background investigations; fees.

(a) When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this section shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

(b) As used in this section, "administration of criminal justice" means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court, or for suitability for appointment of a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives.

(c) In providing criminal history record checks, the Department of Justice shall process requests in the following priority order:

(1) Administration of criminal justice record checks,
(2) Mandatory noncriminal justice criminal history record checks,
(3) Voluntary noncriminal justice criminal history record checks.

(d) Nothing in this section shall be construed as enlarging any right to receive any record of the State Bureau of Investigation. Such rights are and shall be controlled by G.S. 114-15, G.S. 114-19, G.S. 120-19.4A, and other applicable statutes. (1979, c. 816; 1981, c. 832, s. 1; 1987, c. 867, s. 1; 1995 (Reg. Sess., 1996), c. 606, s. 4.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective January 1, 1997, substituted "Criminal history background investigations; fees" for "Fees for performing certain background investigations" in the catchline, added the subsection (a), (b), and (d) designations, and added subsection (c).

§ 114-19.2. Criminal record checks of school personnel.

(a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The Department may also provide a criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to the local board of education from National Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C.

(b) The Department of Justice may provide a criminal record check to the employer of a person who is employed in a nonpublic school or of a person who has applied for employment in a nonpublic school, if the employee or applicant consents to the record check. For purposes of this subsection, the term nonpublic school is one that is subject to the provisions of Article 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in that Article.

(c) The Department of Justice shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(c1) The Department of Justice may provide a criminal record check to the schools within the Department of Health and Human Services of a person who is employed, applies for employment, or applies to be selected as a volunteer, if the employee or applicant consents to the record check. The Department of Health and Human Services shall keep all information pursuant to this subsection confidential, as provided in Article 7 of Chapter 126 of the General Statutes.

(d) The Department of Justice shall adopt rules to implement this section. (1991, c. 705, s. 1; 1993, c. 350, s. 1; 1995, c. 373, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 114-19.3. Criminal record checks of providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled.

(a) Authority. — The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

(1) Hospitals licensed under Chapter 131E of the General Statutes.

(2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.

(3) Adult care homes licensed under Chapter 131D of the General Statutes.

(4) Home care agencies or hospices licensed under Chapter 131E of the General Statutes.

(5) Child placing agencies licensed under Chapter 131D of the General Statutes.

(6) Residential child care facilities licensed under Chapter 131D of the General Statutes.

(7) Hospitals licensed under Chapter 122C of the General Statutes.

(8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.

(9) Licensed child care facilities and nonlicensed child care homes regulated by the State.

(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly.

(b) Procedure. — A criminal record check may be conducted by using an individual's fingerprint or any information required by the Department of Justice to identify that individual. A criminal record check shall be provided only if the individual whose record is checked consents to the record check. The information shall be kept confidential by the entity that receives the information. Upon the disclosure of confidential information under this section by the entity, the Department may refuse to provide further criminal record checks to that entity.

(c) Repealed by Session Laws 1995 (Regular Session, 1996), c. 606, s. 1, effective January 1, 1997.

(d) Foster or Adoptive Parent. — The Department of Justice, at the request of a child placing agency licensed under Chapter 131D of the General Statutes or a local department of social services, may provide a criminal record check of a prospective foster care or adoptive parent if the prospective parent consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency or department, the Department may refuse to provide further criminal record checks to that agency or department.

(e) Fee. — The Department may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee may not exceed fourteen dollars ($14.00). (1993, c. 403, s. 1; 1995, c. 453, s. 1; 1995 (Reg. Sess., 1996), c. 606, s. 1; 1997-506, s. 38.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective January 1, 1997, rewrote this section.

The 1997 amendment, effective September 16, 1997, substituted "child care facilities and nonlicensed child care homes" for "child day care facilities and registered and nonregistered child day care homes" in subdivision (a)(9).

§ 114-19.4. Criminal record checks for foster care.

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 131D-10.3A(g). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. (1995, c. 507, s. 23.26(c); 1997-140, s. 3; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, s. 23.26(e), provides that this section is effective January 1, 1996, and is applicable to foster parents providing care on or after that date, to applicants for foster parent licenses on or after that date, and to foster parents whose licenses are being considered for renewal on or after that date.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-140, s. 3, effective June 4, 1997, substituted "individual" for "foster parent" twice in the second sentence and once in the third sentence.

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 114-19.5. Criminal record checks of child care providers.

The Department of Justice may provide to the Division of Child Development, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories in accordance with G.S. 110-90.2, of any child care provider, as defined in G.S. 110-90.2. The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the child care provider to be checked. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 110-90.2(e). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. (1995, c. 507, s. 23.25(b); 1997-443, s. 11A.118(a); 1997-506, s. 39.)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

The introductory language of Session Laws 1995, c. 507, s. 23.25(b) states that Article 2 is being amended; however, this section is actually in Article 4.

Session Laws 1995, c. 507, s. 23.25(e), provides that this section is effective January 1, 1996, and is applicable to all child day care providers providing child day care as of that date, to all child day care providers newly hired in child day care employment, and to all child day care providers newly owning or operating child day care, on or after that date.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, s. 11A-118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Session Laws 1997-506, s. 39, effective September 16, 1997, substituted "child care" for "child day care" in the catchline and in the second sentence.

§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Health and Human Services.

(a) Definitions. — As used in this section, the term:

(1) "Covered person" means:

a. An applicant for employment or a current employee in a position in the Department of Health and Human Services who provides direct care for a client, patient, student, resident or ward of the Department; or

b. Supervises positions providing direct care as outlined in sub-subdivision a. of this subdivision.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Miscon-

duct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services, the North Carolina Department of Justice may provide to the Department of Health and Human Services a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the Department of Health and Human Services shall provide to the Department of Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department of Health and Human Services shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Health and Human Services shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the Department of Health and Human Services receives through the checking of the criminal history is privileged information and for the exclusive use of the Department of Health and Human Services.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human Services. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department of Health and Human Services in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section. (1997-260, s. 1; 1997-443, s. 11A.118(b).)

Editor's Note. — Subdivisions (a)(1) and (a)(2) were so designated at the direction of the Revisor of Statutes.

Session Laws 1997-260, s. 2, provides that the Department of Human Resources [Health and Human Services] shall use funds available to cover the costs of implementing s. 1 of that act.

Session Laws 1997-260, s. 3, made this section effective October 1, 1997.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

ARTICLE 6.

Office of the Inspector General.

§ 114-40. Inspector General.

(a) The Office of Inspector General is established in the Department of Justice to provide a central point for coordination of and responsibility for activities related to detection, prosecution, and prevention of fraud, abuse, and waste in means-tested public assistance programs. The Office of Inspector General is designated as the State Law Enforcement Bureau (SLEB) to take custody and control of food stamps from the federal Food and Consumer Service to make them available to nonfederal law enforcement and investigative agencies to conduct criminal and food stamp program violation investigations.

(b) It shall be the duty and responsibility of the Inspector General to:

(1) Receive complaints and information concerning alleged fraud, abuse, and waste in means-tested public assistance programs;

(2) Investigate complaints and information received concerning alleged fraud, abuse, or waste in means-tested public assistance programs and, whenever the Inspector General finds it appropriate to do so, to pursue action for any violations of law relating to means-tested public assistance programs, whether by civil action or by criminal prosecution;

(3) Review the activities performed in the Department of Health and Human Services, Divisions of Medical Assistance and Social Services, and in local district attorney's offices relating to detection, prosecution, and prevention of fraud, abuse, or waste in means-tested public assistance programs;

(4) Coordinate and implement fraud, abuse, and waste detection, prosecution, and prevention activities between local program integrity workers, local district attorney's offices, and the State;

(5) Keep the Secretary of Health and Human Services informed concerning fraud, abuse, waste, and deficiencies relating to means-tested public assistance programs administered or financed by the Department of Health and Human Services, recommend corrective action concerning fraud, abuses, and deficiencies, and report to the Secretary and the Joint Legislative Public Assistance Commission on the progress made in implementing corrective action;

(6) Ensure effective coordination and cooperation between the State Auditor, federal auditors, the Department of Health and Human Services, and other governmental bodies in fraud, abuse, and waste detection, prosecution, and prevention activities relating to means-tested public assistance programs with a view toward avoiding duplication; and

(7) Educate State and local law enforcement agencies concerning fraud, abuse, and waste detection, prosecution, and prevention in public assistance programs and encourage pursuit of prosecution of violations.

(c) The Inspector General shall be appointed by the Attorney General and shall report to an official designated by the Attorney General. The Inspector General shall be appointed without regard to political affiliation.

(d) The Inspector General may be removed from office by the Attorney General.

(e) The Inspector General shall have access to any records, data, or other information of the Department of Health and Human Services and local county agencies the Inspector General believes necessary to carry out the Inspector General's duties. The Inspector General may request any information or assistance as may be necessary from the Department or from any federal, State, or local government entity. (1997-443, s. 12.21(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 12.35, made this Article effective August 28, 1997.

Session Laws 1997-443, s. 35.4, is a severability clause.

§ 114-41. Inspector General; investigations.

(a) In carrying out the duties and responsibilities specified in this Article, the Inspector General may initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, abuse, and waste in means-tested public assistance programs. For these purposes, the Inspector General shall:

(1) Receive and consider complaints and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the Inspector General finds appropriate. The Inspector General may receive complaints and information directly from local program integrity workers;

(2) Establish policies and standards for the investigation, detection, and elimination of fraud, abuse, waste, and mismanagement in the means-tested public assistance programs;

(3) Establish and coordinate training programs for local and State program integrity workers to improve detection of fraud, abuse, and waste;

(4) Provide assistance to the federal government aimed at eliminating food stamp violations;

(5) Report expeditiously to the State Bureau of Investigation or other law enforcement agencies, as appropriate, whenever the Inspector General has reasonable grounds to believe there has been a violation of criminal law. The Inspector General may, whenever the Inspector General finds it to be appropriate, prosecute violations of criminal law or bring a civil action relating to fraud, abuse, or waste in means-tested public assistance programs on behalf of the State;

(6) Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the Inspector General or when the Inspector General has reasonable grounds to believe there has been a violation of criminal law; and

(7) Submit in a timely fashion final reports on investigations conducted by the Inspector General to the Attorney General.

(b) The Inspector General shall, not later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding State fiscal year. The final report shall be furnished to the Attorney General and to the Secretary of the Department of Health and Human Services. The report shall include a summary of investigative activities. (1997-443, s. 12.21(a).)

§ 114-42. Inspector General; complaints.

(a) Any person who knows or has reasonable cause to believe that a person has committed, or is in the process of committing, a violation of law relating to fraud, abuse, or waste in a public assistance program, may prepare and file with the Inspector General a complaint that identifies the person making the report and the person who allegedly committed or is committing the wrongful act or omission, describes the wrongful act or omission, and explains how the person reporting knew or came to believe that the person committed or is in the process of committing the wrongful act or omission.

(b) The inspector General shall prescribe a form for complaints under this section. The Inspector General shall provide a blank copy of the form to any person, free of charge. No complaint is defective, however, because it is not made on the form prescribed by the Inspector General. (1997-443, s. 12.21(a).)

Chapter 115B.

Editor's Note. — The legislation and annotations affecting Chapter 115B have been included in a recently published replacement chapter.

Chapter 115C.

Editor's Note. — The legislation and annotations affecting Chapter 115C have been included in a recently published replacement chapter.

Chapter 115D.
Community Colleges.

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115D-25.2. (Effective December 31, 1999) Flexible Compensation Plan.

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ARTICLE 1.

General Provisions for State Administration.

§ 115D-1. Statement of purpose.

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the Division of Youth Services of the Department of Health and Human Services by a court of competent jurisdiction may, if approved by the director of the training school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission. (1963, c. 448, s. 23; 1969, c. 562, s. 1; 1979, c. 462, s. 2; 1985, c. 479, s. 68; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 115D-2.1. State Board of Community Colleges.

(a) The State Board of Community Colleges is established.

(b) The State Board of Community Colleges shall consist of 20 members, as follows:

- (1) The Lieutenant Governor (or a person designated by the Lieutenant Governor) shall be a member ex officio.
- (2) The Treasurer of North Carolina shall be a member ex officio.
- (3) The Governor shall appoint to the State Board four members from the State at large and one member from each of the six Trustee Association Regions defined in G.S. 115D-62. The initial appointments by the Governor shall be made effective July 1, 1980, or as soon as feasible thereafter. In order to establish regularly overlapping terms, the initial appointments by the Governor shall be made so that three expire June 30, 1981, three expire June 30, 1983, and four expire June 30, 1985. Each subsequent regular appointment by the Governor shall be for a term of six years and until a successor is appointed and qualifies. Any vacancy occurring among his appointees before the expiration of term shall be filled by appointment of the Governor; the member so appointed shall meet the same residential qualification, if any, as the member whom he succeeds and shall serve for the remainder of the unexpired term of that member.
- (4) The General Assembly shall elect eight members of the State Board from the State at large in the following manner:
  - a. In 1980, the Senate shall elect three members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and one of whom shall serve a term expiring June 30, 1985. In 1985, the Senate shall elect two members to serve terms expiring June 30, 1991. Each subsequent regular election by the Senate shall be for a term of six years and until a successor is elected and qualifies.
  - b. In 1980, the House of Representatives shall elect four members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and two of whom shall serve a term expiring June 30, 1985. In 1985, the House of Representatives shall elect two members, to serve terms expiring June 30, 1991. Each subsequent regular elec-

tion by the House of Representatives shall be for a term of six years and until a successor is elected and qualifies.

c. Repealed by Session Laws 1985, c. 227, s. 5.

d. The initial elections by the two houses of the General Assembly shall be held on or before July 1, 1980.

e. Any vacancy occurring among the members elected by the two houses of the General Assembly before the expiration of term shall be filled when the General Assembly next convenes. The member then elected shall be elected by the same house that elected the member whom he succeeds, and shall serve for the remainder of the unexpired term of that member.

f. At each session of the General Assembly held in an odd-numbered year, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign to either a standing or a special committee of that house the duty of receiving from the members of that house nominations of persons to be considered by that house for election to the State Board. The chairmen of the two committees shall jointly determine a common final date for receiving nominations from members of that house, and a common date for reporting to their respective houses their nominations for the State Board. Each committee shall screen the proposed candidates for nomination as to their qualifications, background, lack of statutory disabilities, and willingness and ability to serve if elected. Each Senator and each Representative may nominate only one candidate. When the nominating process is closed, each committee shall list all candidates and shall separately vote "aye" or "no" on each candidate to determine whether that person shall be listed as a nominee of the committee. The verbal vote of a majority of those members of the committee present and voting shall constitute one nominee of the committee. An individual cannot be a candidate for nomination to more than one place. If a sufficient number of candidates is submitted to each committee, then each committee shall nominate at least two persons for each place to be filled by that chamber, otherwise each committee shall nominate at least one person for each place to be filled by each of the House of Representatives and the Senate. No person may simultaneously be a candidate for election by both houses, and if one is nominated in both houses, he shall determine by which house he shall be nominated and so advise the chairman of both committees. The two houses shall, by joint resolution, fix a common date and time for the election of members of the State Board. At the election session in each house, the committee shall report its list of nominees with the term of office indicated for each nominee. The ballot in the House of Representatives shall also include the names of all other persons nominated by a member of that house who are determined by the committee to be qualified for the offices, with the committee's list of nominees being clearly set out on the ballot. No additional nominations shall be received from the floor. Each house shall then proceed to an election of the State Board. In order to be chosen, a nominee shall receive the votes of a majority of all members present and voting.

When each house has chosen one person for each place to be filled on the State Board, the chairman of the committee shall make a motion for the simultaneous election of those persons by that house to the indicated positions and for the indicated terms. The vote shall then be called electronically. If a majority of those voting shall vote "aye," persons named in the motion shall be declared to have been elected. Each house may adopt rules consistent with this section with respect to the election by that house of members of the State Board.

(c) No person may be appointed or elected to more than two consecutive terms of six years on the State Board.

(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board and no spouse of any of those persons, shall be eligible to serve on the State Board. Furthermore, no person who within the prior five years has been an employee of the Department of Community Colleges shall be eligible to serve on the State Board.

(e) The Governor shall convene the membership of the State Board on July 1, 1980, or as soon as feasible thereafter. The State Board at that meeting shall elect from its appointed or elected membership a chairman and such other officers as it may deem necessary.

(f) At its first meeting after July 1, 1981, and every two years thereafter, the State Board shall elect from its membership a chairman and such other officers as it may deem necessary.

(g) The State Board of Community Colleges shall meet at stated times established by the State Board, but not less frequently than 10 times a year. The State Board of Community Colleges shall also meet with the State Board of Education and the Board of Governors of The University of North Carolina at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State; these joint meetings shall be hosted by the three Boards according to the schedule set out in G.S. 115C-11(b1). Special meetings of the State Board may be set at any regular meeting or may be called by the chairman. A majority of the qualified members of the State Board shall constitute a quorum for the transaction of business.

(h) Whenever any vacancy shall occur in the appointed membership of the State Board, the chairman shall inform the appropriate appointing authority of the vacancy.

(i) The State Board of Community Colleges may declare vacant the office of an appointed or elected member who does not attend three consecutive scheduled meetings without justifiable excuse. The chairman of the State Board shall notify the appropriate appointing or electing authority of any vacancy. (1979, c. 896, s. 2; 1979, 2nd Sess., c. 1130, s. 5; 1981, c. 47, s. 8; c. 474; 1983, c. 311; c.

479, ss. 1-3; 1985, c. 227, ss. 1-5; c. 428; 1987 (Reg. Sess., 1988), c. 1102, s. 2; 1991, c. 83, s. 1; 1993, c. 69, s. 2; 1995, c. 192, s. 1; c. 470, ss. 3, 4; 1997-456, ss. 18, 19.)

Editor's Note. — Session Laws 1995, c. 192, s. 1, which amended this section, was effective June 7, 1995, and applicable to absences occurring on or after that date.

Session Laws 1995, c. 470, ss. 3 and 4, which amended this section, were effective July 24, 1995, and applicable to terms beginning on or after that date.

Effect of Amendments. — Session Laws 1997-456, s. 18, effective August 29, 1997, substituted "G.S. 115D-62" for "G.S. 115D-63" in subdivision (b)(3).

Session Laws 1997-456, s. 19, effective August 29, 1997, substituted "five" for "5" in the last sentence of subsection (d).

§ 115D-4. Establishment of institutions; capital improvements.

Editor's Note. — Session Laws 1995, c. 269, s. 1, provides that a pilot correction education program that would allow prison inmates to participate in community college capital construction projects is established. The State Board of Community Colleges shall report to the General Assembly prior to January 1, 1997 on the progress of the program.

§ 115D-4.1. College transfer program approval; standards for programs.

(a) Repealed by Session Laws 1995, c. 288, s. 1, effective September 1, 1995.

(b) The State Board of Community Colleges may approve the addition of the college transfer program to a community college. If addition of the college transfer program to an institution would require a substantial increase in funds, State Board approval shall be subject to appropriation of funds by the General Assembly for this purpose.

(c) Addition of the college transfer program shall not decrease an institution's ability to provide programs within its basic mission of vocational and technical training and basic academic education.

(d) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the addition of the college transfer program to institutions.

(e) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the operation of college transfer programs. The criteria and standards shall require:

(1) All college transfer programs to continue to meet the accreditation standards of the Southern Association of Colleges and Schools,

(2) Each community college that offers a college transfer program to have an articulation agreement with at least one four-year college or university for the acceptance of those courses,

(3) Each community college that offers a college transfer program to disclose to students when they register for college transfer courses the articulation agreements the community college has with a four-year college or university.

The State Board of Community Colleges shall report annually to the General Assembly on compliance of the community colleges with these criteria and standards.

(f) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges in accordance with G.S. 116-11(10b) on the academic performance of that community college's transfer students. If the State Board of Community Colleges finds that college transfer students from a community college are not consistently performing adequately at a four-year college, the Board shall review the community college's program and determine what steps are necessary to remedy the problem. The Board shall report annually to the General Assembly on the reports it receives and on what steps it is taking to remedy problems that it finds. (1987, c. 564, s. 4; 1995, c. 288, s. 1.)

Cross References. — For provisions regarding implementation and monitoring of the plan for transfer of credits between North Carolina institutions of higher education as enacted by Session Laws 1995 (Reg. Sess., 1996), c. 625, see the editor's note under § 115D-5.

Editor's Note. — Session Laws 1995, c. 287, ss. 1-3, effective June 19, 1995, provides for the development, by the Board of Governors of the University of North Carolina and the State Board of Community Colleges, of a plan for the transfer of credits between the institutions of the North Carolina Community College System, and between those institutions and the constituent institutions of The University of North Carolina, the intention of the General Assembly to adopt a plan for the transfer of credits, and the implementation, by the State Board of Community Colleges, of a common course numbering system.

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

(a) The State Board of Community Colleges may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the State Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Community Colleges shall establish standards and scales for salaries and allotments paid from funds administered by the State Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The State Board shall have authority with respect to individual institutions: to approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees within policies for tuition and fees established by the General Assembly; and to establish and regulate financial accounting procedures.

The State Board of Community Colleges shall require all community colleges to meet the faculty credential requirements of the Southern Association of Colleges and Schools for all community college programs.

(a1) Notwithstanding G.S. 66-58(c)(3) or any other provisions of law, the State Board of Community Colleges may adopt rules governing the expenditure of funds derived from bookstore sales by community colleges. These expenditures shall be consistent with the mission and purpose of the Community College System. Profits may be used in the support and enhancement of the bookstores, for student aid or scholarships, for expenditures of direct benefit to students, and for other similar expenditures authorized by the board of trustees, subject to rules adopted by the State Board. These funds shall not be used to supplement salaries of any personnel.

(a2) The State Board of Community Colleges shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State.

(a3) The State Board of Community Colleges shall issue rules for the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate. The person required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.

(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

The rules shall provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate. The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the Division of Youth Services of the Department of Health and Human Services required to be certified pursuant to Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Division of Youth Services of the Department of Health and Human Services by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered pursuant to Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section.

(c) No course of instruction shall be offered by any community college at State expense or partial State expense to any captive or co-opted group of students, as defined by the State Board of Community Colleges, without prior approval of the State Board of Community Colleges. Approval by the State Board of Community Colleges shall be presumed to constitute approval of both the course and the group served by that institution. The State Board of Community Colleges may delegate to the President the power to make an initial approval, with final approval to be made by the State Board of Community Colleges. A course taught without such approval will not yield any full-time equivalent students, as defined by the State Board of Community Colleges.

(c1) Community colleges shall report full-time equivalent (FTE) student hours for correction education programs on the basis of contact hours rather than student membership hours. No community college shall operate a multi-entry/multi-exit class or program in a prison facility, except for a literacy class or program.

The State Board shall work with the Department of Correction on offering classes and programs that match the average length of stay of an inmate in a prison facility.

(d) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(e) The State Board of Community Colleges is authorized to enter into agreements with local boards of education, upon approval by the Governor, for the establishment and operation of extension units of the community college system, provided that the Governor may consult with the Advisory Budget Commission before giving approval. The State Board is further authorized to provide the financial support for matching capital outlay and for operating and equipping extension units as provided in this Chapter for other institutions, subject to available funds.

On petition of a board of education of the school administrative unit in which an extension unit is proposed to be established, the State Board of Community Colleges may approve the use by the proposed institution of existing public school facilities, if the State Board finds:

(1) That an adequate portion of these facilities can be devoted to the exclusive use of the institution, and
(2) That use of these facilities will be consistent with sound educational considerations.

(f) A community college may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the Joint Legislative Commission on Governmental Operations, and the Advisory Budget Commission on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved.

(g) Funds appropriated to the Department of Community Colleges as operating expenses for allocation to the institutions comprising the North Carolina Community College System shall not be used to support recreation extension courses. The financing of these courses by any institution shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students (FTE) for use in budget-funding formulas at the State level.

(h) Whenever a community college offers real estate continuing education courses pursuant to G.S. 93A-4A, the courses shall be offered on a self-supporting basis.

(i) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on March 1 and October 1 of each year on expenditures for the New and Expanding Industry Program each fiscal year. The report shall include, for each company or individual that receives funds for New and Expanding Industry:

(1) The total amount of funds received by the company or individual;
(2) The amount of funds per trainee received by the company or individual;
(3) The amount of funds received per trainee by the community college training the trainee;
(4) The number of trainees trained by company and by community college; and
(5) The number of years the companies or individuals have been funded.

(j) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year.

(k) The North Carolina Community College System's New and Expanding Industry Training (NEIT) Program Guidelines, which were adopted by the State Board of Community Colleges on April 18, 1997, apply to all funds appropriated for the Program after June 30, 1997. A project approved as an exception under these Guidelines, or these Guidelines as modified by the State Board of Community Colleges, shall be approved for one year only. (1963, c. 488, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882; 1977, c. 1065; 1979, c. 462, s. 2; c. 896, ss. 5-7; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 609; c. 859, s. 35.1; c. 897; c. 1127, s. 43; 1983, c. 717, s. 28; 1983 (Reg. Sess., 1984), c. 1034, ss. 45, 46; 1985, c. 479, s. 67; 1985 (Reg. Sess., 1986), c. 955, s. 22; 1987, c. 282, s. 34; c. 564, ss. 8-10, 12, 33; c. 763, s. 1; 1989, c. 162; 1989 (Reg. Sess., 1990), c. 915, s. 1; c. 1066, s. 91; 1991, c. 689, ss. 44, 48; 1991 (Reg. Sess., 1992), c. 880, s. 4; 1993, c. 170, s. 2; c. 321, ss. 111, 117(e); c. 492, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 18.4; 1995, c. 288, s. 2; c. 324, s. 16.4; 1996, 2nd Ex. Sess., c. 18, ss. 17.4, 17.7(a); 1997-443, ss. 9.5, 9.6(a), 11A.118(a); 1997-507, s. 4.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1991 (Reg. Sess., 1992), c. 880, which amended this section, in s. 6, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 677, s. 14, and by Session Laws 1995, c. 507, s. 17.6(b), provides: "The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1996."

Session Laws 1995 (Reg. Sess., 1996), c. 625, provides that the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall develop a plan to provide students with information regarding the transfer of credits between community colleges and between community colleges and the constituent institutions of The University of North Carolina, shall develop a timetable for development of guidelines and report to the General Assembly and the Joint Legislative Education Oversight Committee by January 15, 1997, and shall review policies and make any necessary changes by September 1, 1997.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 17.7(b), provides: "(b) Of the funds appropriated for the 1996-97 fiscal year to the Department of Community Colleges, two hundred thousand dollars ($200,000) shall be used for start-up costs at the newest Hosiery Technology Center Program created in 1995-96 and two hundred thousand dollars ($200,000) shall be used for start-up costs for new community college programs serving the recently constructed Pasquotank Correctional Institution."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-38, ss. 1-4, made an emergency appropriation to the North Carolina Community College System New and Expanding Industry Training (NEIT) Programs.

Session Laws 1997-443, s. 9.6(a) added a subsection (j) which has been designated herein as subsection (k) at the direction of the Revisor of Statutes.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Session Laws 1997-507, s. 8, effective September 17, 1997, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that agencies are authorized to adopt temporary rules to implement the act.

Session Laws 1997-507, s. 9, is a severability clause.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 18, ss. 17.4 and 17.7, added subsections (i) and (j).

Session Laws 1997-443, ss. 9.5, 9.6, effective July 1, 1997, substituted "October 1" for "September 1" in the introductory language of subsection (i), deleted the second paragraph of subsection (i), which read "The September 1, 1996, report shall include this information for the prior three fiscal years", and added subsection (k).

Session Laws 1997-443, s. 11A-118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Session Laws 1997-507, s. 4, effective September 17, 1997, added subsection (a3).

ARTICLE 2.

Local Administration.

§ 115D-12. Each institution to have board of trustees; selection of trustees.

(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies.

Group One — four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S.

115D-59. No board of education shall elect a member of the board of education or any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two — four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. No more than one trustee from Group Two may be a member of a board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three — four trustees, appointed by the Governor.

Group Four — the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution.

(b) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto with the exception of members provided for in G.S. 115D-12(a), Group Four.

(b1) No person who has been employed full time by the community college within the prior 5 years and no spouse or child of a person currently employed full time by the community college shall serve on the board of trustees of that college.

(c) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term. (1963, c. 448, s. 23; 1977, c. 823, ss. 104; 1979, c. 462, s. 2; 1985, c. 757, s. 147; 1987, c. 564, ss. 10, 12; 1987 (Reg. Sess., 1988), c. 1037, s. 111; 1991, c. 283, s. 1; 1995, c. 470, s. 1.)

Local Modification. — College of the Albemarle: 1997-12, s. 1.

Editor's Note. — Session Laws 1995, c. 470, s. 1, which amended this section, was effective July 24, 1995, and applicable to terms beginning on or after that date.

§ 115D-14. Board of trustees a body corporate; corporate name and powers; title to property.

Local Modification. — Gaston, Greene, and Sampson: 1995, c. 399, s. 3.

§ 115D-15. Sale, exchange or lease of property.

Local Modification. — Chatham: 1995, c. 80, s. 2; Gaston: 1995, c. 399, ss. 1, 3; Greene: 1995, c. 399, ss. 1, 3; Halifax: 1995 (Reg. Sess., 1996), c. 706; Montgomery: 1995, c. 154, s. 3; Nash: 1995 (Reg. Sess., 1996), c. 706; Sampson: 1995, c. 399, ss. 1, 3; Wilson: 1995 (Reg. Sess., 1996), c. 706.

For additional local modifications to this section, see the main pamphlet.

§ 115D-19. Removal of trustees.

(a) Should the State Board of Community Colleges have sufficient evidence that any member of the board of trustees of an institution is not capable of discharging, or is not discharging, the duties of his office as required by law or lawful regulation, or is guilty of immoral or disreputable conduct, the State Board shall notify the chairman of such board of trustees, unless the chairman is the offending member, in which case the other members of the board shall be notified. Upon receipt of such notice there shall be a meeting of the board of trustees for the purpose of investigating the charges, at that meeting a representative of the State Board of Community Colleges may appear to present evidence of the charges. The allegedly offending member shall be given proper and adequate notice of the meeting and the findings of the other members of the board shall be recorded, along with the action taken, in the minutes of the board of trustees. If the charges are, by an affirmative vote of two-thirds of the members of the board, found to be true, the board of trustees shall declare the office of the offending member to be vacant.

Nothing in this section shall be construed to limit the authority of a board of trustees to hold a hearing as provided herein upon evidence known or presented to it.

(b) A board of trustees may declare vacant the office of a member who does not attend three consecutive, scheduled meetings without justifiable excuse. A board of trustees may also declare vacant the office of a member who, without justifiable excuse, does not participate within six months of appointment in a trustee orientation and education session sponsored by the North Carolina Association of Community College Trustees. The board of trustees shall notify the appropriate appointing authority of any vacancy. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1989, c. 521, s. 2; 1995, c. 470, s. 2.)

Editor's Note. — Session Laws 1995, c. 470, s. 2, which amended this section, was effective July 24, 1995, and applicable to terms beginning after June 30, 1995.

§ 115D-20. (See Editor's note) Powers and duties of trustees.

Local Modification. — Gaston, Greene, and Sampson: 1995, c. 399, s. 3.

CASE NOTES

Employment Duties. — This section, making one of the duties of the Board of Trustees to elect a president of a college and to elect or employ all other personnel of the institution, essentially makes the Board of Trustees the de facto employers of community college president and other employees, and the board should be held to the same standards as other employers for the tortious acts of its employees. Caldwell v. Linker, 901 F. Supp. 1010 (M.D.N.C. 1995).

§ 115D-24. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance.

CASE NOTES

Cited in Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996).

§ 115D-25.1. (Effective until December 31, 1999) Dependent care assistance program.

The State Board of Community Colleges is authorized to provide eligible employees of constituent institutions a program of dependent care assistance as available under Section 129 and related sections of the Internal Revenue Code of 1986, as amended. The State Board may authorize constituent institutions to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the State Board decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, it may select a contractor only upon a thorough and completely competitive procurement process. (1989, c. 458, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 14(c); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a).)

Section Set Out Twice. — The section above is effective until December 31, 1999. For the section as amended effective December 31, 1999, see the following section also numbered § 115D-25.1.

Editor's Note. —
Session Laws 1997-443, s. 33.20(a), extended the expiration date of the amendment to December 31, 1999.

§ 115D-25.1. (Effective December 31, 1999) Dependent care assistance program.

The State Board of Community Colleges is authorized to provide eligible employees of constituent institutions a program of dependent care assistance as available under Section 129 and related sections of the Internal Revenue Code of 1986, as amended. The State Board may authorize constituent institutions to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. Should the State Board decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, it may select a contractor only upon a thorough and completely competitive procurement process. (1989, c. 458, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 14(c); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a).)

Section Set Out Twice. — The section above is effective December 31, 1999. For the section as in effect until December 31, 1999, see the preceding section, also numbered § 115D-25.1.

Editor's Note. —

Session Laws 1997-443, s. 33.20(a), extended the expiration date of the amendment to December 31, 1999.

§ 115D-25.2. (Effective until December 31, 1999) Flexible Compensation Plan.

Notwithstanding any other provisions of law relating to the salaries of employees of community college boards of trustees, the State Board of Community Colleges is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the State Board may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the State Board decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process. (1989 (Reg. Sess., 1990), c. 1059, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 14(g); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a).)

Section Set Out Twice. — The section above is effective until December 31, 1999. For the section as amended effective December 31, 1999, see the following section, also numbered § 115D-25.2.

Editor's Note. —

Session Laws 1997-443, s. 33.20(a) extended the expiration date of the amendment to December 31, 1999.

§ 115D-25.2. (Effective December 31, 1999) Flexible Compensation Plan.

Notwithstanding any other provisions of law relating to the salaries of employees of community college boards of trustees, the State Board of Community Colleges is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the State Board may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the State Board decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process. (1989 (Reg. Sess., 1990), c. 1059, s. 2; 1991 (Reg. Sess., 1992, c. 1044, s. 14(g); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 28.A; 1997-443, s. 33.20(a).)

Section Set Out Twice. — The section above is effective December 31, 1999. For the section as in effect unti December 31, 1999, see the preceding section, also numbered § 115D-25.2.

Editor's Note. —

Session Laws 1997-443, s. 33.20(a) extended the expiration date of the amendment to December 31, 1999.

ARTICLE 3.

Financial Support.

§ 115D-31. State financial support of institutions.

(a) The State Board of Community Colleges shall be responsible for providing, from sources available to the State Board, funds to meet the financial needs of institutions, as determined by policies and regulations of the State Board, for the following budget items:

(1) Plant Fund. — Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodel-

ing of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State. Notwithstanding the provisions of this subdivision, G.S. 116-53(b), or G.S. 143-31.4, appropriations by the State of North Carolina for capital or permanent improvements for community colleges may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes.

(2) Current Operating Expenses:

a. General administration. — Salaries and other costs as determined by the State Board necessary to carry out the functions of general administration.

b. Instructional services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of instructional services.

c. Support services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of support services.

(3) Additional Support for Regional Institutions as Defined in G.S. 115D-2(4). — Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32(a)(2)a. Amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the administrative area in which the regional institution is located shall be called the "local factor," the combined populations of all other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115D-32(a)(2)a has been approved under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest United States census.

(b) The State Board is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions.

(c) State funds appropriated to the State Board of Community Colleges for equipment and library books shall revert to the General Fund 12 months after the close of the fiscal year for which they were appropriated. Encumbered balances outstanding at the end of each period shall be handled in accordance with existing State budget policies. The Department shall identify to the Office of State Budget and Management the funds that revert at the end of the 12 months after the close of the fiscal year. (1963, c. 448, s. 23; 1973, c. 590, ss. 2, 3; c. 637, s. 1; 1979, c. 462, s. 2; c. 896, s. 13; c. 946, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 2; 1985, c. 757, s. 146; 1987, c. 564, ss. 9, 12; 1995, c. 324, s. 16.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1993, c. 542, as amended by Session Laws 1995, c. 515, provides for the issuance of general obligation bonds of the State, to be allocated, inter alia, to provide grants to individual community colleges to finance the costs of community college capital improvements for community colleges in this State.

§ 115D-32. Local financial support of institutions.

(a) The tax-levying authority of each institution shall be responsible for providing, in accordance with the provisions of G.S. 115D-33 or 115D-34, as appropriate, adequate funds to meet the financial needs of the institutions for the following budget items:

(1) Plant Fund: Acquisition of land; erection of all buildings; alterations and additions to buildings; purchase of automobiles, buses, trucks, and other motor vehicles; purchase or rental of all equipment necessary for the maintenance of buildings and grounds and operation of plants; and purchase of all furniture and equipment not provided for administrative and instructional purposes.

(2) Current expenses:

a. Plant operation and maintenance:

1. Salaries of janitors, maids, watchmen, maintenance and repair employees.
2. Cost of fuel, water, power, and telephones.
3. Cost of janitorial supplies and materials.
4. Cost of operation of motor vehicles.
5. Cost of maintenance and repairs of buildings and grounds.
6. Maintenance and replacement of furniture and equipment provided from local funds.
7. Maintenance of plant heating, electrical, and plumbing equipment.
8. Maintenance of all other equipment, including motor vehicles, provided by local funds.
9. Rental of land and buildings.
10. Any other expenses necessary for plant operation and maintenance.

b. Support services:

1. Cost of insurance for buildings, contents, motor vehicles, workers' compensation for institutional employees paid from local funds, and other necessary insurance.
2. Any tort claims awarded against the institution due to the negligence of the institutional employees.
3. Cost of bonding institutional employees for the protection of local funds and property.

4. Cost of elections held in accordance with G.S. 115D-33 and 115D-35.
5. Legal fees incurred in connection with local administration and operation of the institution.

(b) The board of trustees of each institution may apply local public funds provided in accordance with G.S. 115D-33(a), as appropriate, or private funds, or both, to the supplementation of items of the current expense budget financed from State funds, provided a budget is submitted in accordance with G.S. 115D-54.

(c) The board of trustees of each institution may apply institutional funds provided in accordance with G.S. 115D-54(b)(3) for such purposes as may be determined by the board of trustees of the institution.

(d) The counties that agree to have satellite campuses of community colleges located in them accept the maintenance and utility costs of these satellite campuses. (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 3; 1985, c. 757, s. 148(a); 1987, c. 564, s. 11; 1995, c. 509, s. 64.)

§ 115D-39. Student tuition and fees.

The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and G.S. 116-143.3, shall apply to students attending institutions operating pursuant to this Chapter; provided, however, that when an employer other than the armed services, as that term is defined in G.S. 116-143.3, pays tuition for an employee to attend an institution operating pursuant to this Chapter and when the employee works at a North Carolina business location, the employer shall be charged the in-State tuition rate; provided further, however, a community college may charge in-State tuition to up to one percent (1%) of its out-of-state students, rounded up to the next whole number, to accommodate the families transferred by business, the families transferred by industry, or the civilian families transferred by the military, consistent with the provisions of G.S. 116-143.3, into the State. Notwithstanding these requirements, a refugee who lawfully entered the United States and who is living in this State shall be deemed to qualify as a domiciliary of this State under G.S. 116-143.1(a)(1) and as a State resident for community college tuition purposes as defined in G.S. 116-143.1(a)(2). (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 58; 1989, c. 752, s. 85; 1991 (Reg. Sess., 1992), c. 1044, s. 25(a); 1993, c. 561, s. 50(a); 1996, 2nd Ex. Sess., c. 18, s. 17.1(a).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 17.1(b), provides that the State Board of Community Colleges shall adopt rules to implement Session Laws 1996, Second Extra Session, c. 18, s. 17.1, effective for the fall 1996 quarter.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, added the language beginning "provided further, however" and ending "into the State" in the first sentence of the third paragraph.

Chapter 115E.

Higher Educational Facilities Finance Act.

Sec.
115E-4. Educational facilities finance agency.
115E-21. Tax exemption.

§ 115E-4. Educational facilities finance agency.

(a) There is hereby created a body politic and corporate to be known as "North Carolina Educational Facilities Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The agency shall be governed by a board of directors composed of seven members. Two of the members of said board shall be the State Treasurer and the State Auditor, both of whom shall serve ex officio. The remaining directors of the agency shall be residents of the State and shall not hold other public office. The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint one director in accordance with G.S. 120-121, the General Assembly upon the recommendation of the Speaker of the House shall appoint one director in accordance with G.S. 120-121, and the Governor shall appoint three of the directors of the agency. The five appointive directors of the agency shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and the Speaker of the House, respectively, and one for two years, one for three years and one for four years, respectively, as designated by the Governor, and each director shall continue in office until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any vacancy in a position held by an appointive member shall be filled by a new appointment made by the officer who originally made such appointment. Any member of the board of directors shall be eligible for reappointment. Each appointive member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointive member of the board of directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the board of directors a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier or either two years or the date of expiration of their then current terms as members of the board of directors of the agency. The board of directors shall elect and appoint and prescribe the duties of a secretary-treasurer and such other officers as it shall deem necessary or advisable, which officers need not be members of the board of directors.

(b) No part of the revenues or assets of the agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the agency shall receive no compensation for their services but shall be entitled to receive, for attendance at meetings of the agency or any committee thereof and for other services for the agency, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(c) The secretary-treasurer of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute book or journal of the agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the agency and to give certificates under the official seal of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates.

(d) Four members of the board of directors of the agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the board of directors duly called and held shall be necessary for any action taken by the board of directors of the agency; provided, however, that the board of directors may appoint an executive committee to act on behalf of said board during the period between regular meetings of said board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the agency.

(e) The North Carolina Educational Facilities Finance Agency shall be contained within the Department of State Treasurer as if it had been transferred to that department by a Type II transfer as defined in G.S. 143A-6(b). (1985 (Reg. Sess., 1986), c. 794, s. 4; 1995, c. 490, s. 17(a).)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

§ 115E-21. Tax exemption.

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and welfare, and no tax or assessment shall be levied upon any project undertaken by the agency prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with such project.

Any bonds or notes issued by the agency under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1985 (Reg. Sess., 1986), c. 794, s. 21; 1995, c. 46, s. 5.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Session Laws 1995, c. 46, s. 5, which amended this section, was effective July 1, 1995, and applicable to obligations issued on or after that date.

Chapter 116.

Higher Education.

Article 1.

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ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

(a) In order to foster the development of a well-planned and coordinated system of higher education, to improve the quality of education, to extend its benefits and to encourage an economical use of the State's resources, the University of North Carolina is hereby redefined in accordance with the provisions of this Article.

(b) The University of North Carolina is a public, multicampus university dedicated to the service of North Carolina and its people. It encompasses the 16 diverse constituent institutions and other educational, research, and public service organizations. Each shares in the overall mission of the university. That mission is to discover, create, transmit, and apply knowledge to address the needs of individuals and society. This mission is accomplished through instruction, which communicates the knowledge and values and imparts the skills necessary for individuals to lead responsible, productive, and personally satisfying lives; through research, scholarship, and creative activities, which advance knowledge and enhance the educational process; and through public service, which contributes to the solution of societal problems and enriches the quality of life in the State. In the fulfillment of this mission, the university shall seek an efficient use of available resources to ensure the highest quality in its service to the citizens of the State.

Teaching and learning constitute the primary service that the university renders to society. Teaching, or instruction, is the primary responsibility of each of the constituent institutions. The relative importance of research and public service, which enhance teaching and learning, varies among the constituent institutions, depending on their overall missions. (1971, c. 1244, s. 1; 1995, c. 507, s. 15.17.)

Editor's Note. —
Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 116-2. Definitions.

As used in this Article, unless the context clearly indicates a contrary intent:

(1) "Board" means the Board of Governors of the University of North Carolina.
(2) "Board of trustees" means the board of trustees of a constituent institution.
(3) "Chancellor" means the chancellor of a constituent institution.
(4) "Constituent institution" or "institution" means one of the 16 public senior institutions, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State University.
(5) "President" means the President of the University of North Carolina.
(6) "Vending facilities" has the same meaning as it does in G.S. 143-12.1. (1971, c. 1244, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 171; 1995 (Reg. Sess., 1996), c. 603, s. 1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, inserted "redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke'" following "Pembroke State University" in subdivision (4).

Part 2. Organization, Governance and Property of the University.

§ 116-4. Constituent institutions of the University of North Carolina.

On July 1, 1972, the University of North Carolina shall be composed of the following institutions: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, inserted "redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke'" following "Pembroke State University".

CASE NOTES

Punitive damages were not recoverable in Title VII case against North Carolina State University because under 42 U.S.C. § 1981a(b)(1), punitive damages cannot be recovered from a governmental entity. Bryant v. Locklear, 947 F. Supp. 915 (E.D.N.C. 1996).

§ 116-5. Initial membership of Board of Governors.

(a) Commencing July 1, 1972, and continuing for the terms hereinafter stated and until their successors are chosen, the Board of Governors shall consist of the following members:

(1) Three persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of East Carolina University and two persons elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Appalachian State University, North Carolina Agricultural and Technical State University, North Carolina Central University, and Western Carolina University.

(2) One person elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Elizabeth City State University, Fayetteville State University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", and Winston-Salem State University.

(3) Sixteen persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina.

(4) Two persons elected prior to January 1, 1972, by the Board of Higher Education from its eight members-at-large. These shall be nonvoting members whose terms shall expire on June 30, 1973.

(b) Of the 16 persons elected by the Board of Trustees of the University of North Carolina, four shall serve a term ending on June 30, 1973, four shall serve a term ending on June 30, 1975, four shall serve a term ending on June 30, 1977, and four shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 16 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the 11 persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(1), three shall serve a term ending in 1973, three shall serve a term ending on June 30, 1975, three shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 11 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the five persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(2), the member elected from the Board of Trustees of the North Carolina School of the Arts shall serve a term ending on June 30, 1973, and of the remaining members, one shall serve a term ending on June 30, 1975, one shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those four persons, excluding the member from the North Carolina School of the Arts, shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1975, 1977, and 1979 respectively.

(c) Any vacancy occurring in the membership of the Board of Governors between July 1, 1972, and June 30, 1973, shall be filled by appointment of the Governor, and the person appointed shall serve for the remainder of the unexpired term.

(d) The Governor shall serve ex officio as a member and as chairman of the Board of Governors until December 31, 1972. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 3.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, inserted "redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke'" following "Pembroke State University" in subdivision (a)(2).

§ 116-11. Powers and duties generally.

The powers and duties of the Board of Governors shall include the following:

(1) The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Community Colleges, the Department of Community Colleges and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, the Advisory Budget Commission and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college system, shall be administered by the Board pursuant to any requirements of State or federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.

(2) The Board of Governors shall be responsible for the general determination, control, supervision, management and governance of all affairs of the constituent institutions. For this purpose the Board may adopt such policies and regulations as it may deem wise. Subject to applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Governors may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property, with the

exception of any property that may be held by trustees of institutional endowment funds under the provisions of G.S. 116-36 or that may be held, under authority delegated by the Board of Governors, either by a board of trustees or by trustees of any other endowment or trust fund.

(3) The Board shall determine the functions, educational activities and academic programs of the constituent institutions. The Board shall also determine the types of degrees to be awarded. The powers herein given to the Board shall not be restricted by any provision of law assigning specific functions or responsibilities to designated institutions, the powers herein given superseding any such provisions of law. The Board, after adequate notice and after affording the institutional board of trustees an opportunity to be heard, shall have authority to withdraw approval of any existing program if it appears that the program is unproductive, excessively costly or unnecessarily duplicative. The Board shall review the productivity of academic degree programs every two years, using criteria specifically developed to determine program productivity.

(4) The Board of Governors shall elect officers as provided in G.S. 116-14. Subject to the provisions of section 18 of this act [Session Laws 1971, Chapter 1244, section 18], the Board shall also elect, on nomination of the President, the chancellor of each of the constituent institutions and fix his compensation. The President shall make his nomination from a list of not fewer than two names recommended by the institutional board of trustees.

(5) The Board of Governors shall, on recommendation of the President and of the appropriate institutional chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers and persons having permanent tenure.

(5a) [Expired.]

(5b) The Board of Governors may by resolution provide that, until July 1, 1998, every president, vice-president, and other administrative officer of the University whom it elects and who is not subject to Chapter 126 of the General Statutes, and every chancellor, vice-chancellor, senior academic officer, senior administrative officer, and faculty member who serves a constituent institution or agency of the University and who is not subject to Chapter 126 of the General Statutes, shall retire on July 1 coincident with or next following his seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the Board of Governors.

(6) The Board shall approve the establishment of any new publicly supported institution above the community college level.

(7) The Board shall set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.

(8) The Board shall set enrollment levels of the constituent institutions.

(8a) The Board of Governors, after consultation with representatives from nonpublic schools, including representatives of nonpublic schools operated under Parts 1 and 3 of Article 39 of Chapter 115C of the General Statutes, and after taking into consideration comments received from the Joint Legislative Education Oversight Committee, shall adopt a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The policy shall not arbitrarily differentiate between applicants based upon whether the applicant attended a public or a lawfully operated nonpublic school.

(9)a. The Board of Governors shall develop, prepare and present to the Governor, the Advisory Budget Commission and the General Assembly a single, unified recommended budget for all of public senior higher education. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas. The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget.

b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the Board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum for allocation to the institutions. The Board shall make allocations among the institutions in accordance with the Board's schedule of priorities and any specifications in the Current Operations Appropriations Act. When both the Board and the Director of the Budget deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. Provided, nothing herein shall be construed to allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions in any specifications as to priorities in the third category. Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.

c. The Director of the Budget may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over or under enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions. Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.

d. Repealed by Session Laws 1987, c. 795, s. 27, effective July 1, 1987.

(10) The Board shall collect and disseminate data concerning higher education in the State. To this end it shall work cooperatively with the Department of Community Colleges and shall seek the assistance of the private colleges and universities. It may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable.

(10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with private higher education institutions defined in G.S. 116-22(1), shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, "institutions of higher education" shall mean public higher education institutions defined in G.S. 116-143.1(a)(3), and those private higher education institutions defined in G.S. 116-22(1) that choose to participate in the information exchange. The information shall include:

a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;

b. College performance of high school graduates for the year immediately following high school graduation including each student's: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State;

c. The progress of students from one institution of higher education to another; and

d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including course code, name, units earned toward graduation, and credits earned for admission from an institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education.

The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter.

(10b) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges on the academic performance of that community college's transfer students.

(11) The Board shall assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State.

(12) The Board shall give advice and recommendations concerning higher education to the Governor, the General Assembly, the Advisory Budget Commission and the boards of trustees of the institutions.

(12a) The Board of Governors of The University of North Carolina shall implement, administer, and revise programs for meaningful professional development for professional public school employees based upon the evaluations and recommendations made by the State Board of Education under G.S. 115C-12(26). The programs shall be aligned with State education goals and directed toward improving student academic achievement. The Board of Governors shall submit to the State Board of Education an annual report evaluating the professional development programs administered by the Board of Governors.

(13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part.

(14) The Board shall possess all powers not specifically given to institutional boards of trustees. (1971, c. 1244, s. 1; 1979, c. 862, s. 8; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 163; c. 717, ss. 29, 30; c. 761, s. 113; 1983 (Reg. Sess., 1984), c. 1019, s. 2; 1985, c. 757, s. 152; 1985 (Reg. Sess., 1986), c. 955, ss. 23-27; 1987, c. 795, s. 27; 1991 (Reg. Sess., 1992), c. 880, ss. 2, 6; c. 1039, s. 25; 1993, c. 407, s. 2; 1993 (Reg. Sess., 1994), c. 677, s. 14; 1995, c. 288, s. 3; 1997-221, s. 12(b); 1997-240, s. 3.)

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students by Session Laws 1995, c. 324, see the Editor's Note under G.S. 116-19.

For provisions describing the purposes and goals of the Excellent Schools Act, Session Laws 1997-221, s. 2, see Editor's note following § 115C-105.38A.

Editor's Note. —

Session Laws 1995, c. 287, ss. 1-3, effective June 19, 1995, provides for the development, by the Board of Governors of the University of North Carolina and the State Board of Community Colleges, of a plan for the transfer of credits between the institutions of the North Carolina Community College System, and between those institutions and the constituent institutions of The University of North Carolina, the intention of the General Assembly to adopt a plan for the transfer of credits, and the implementation, by the State Board of Community Colleges, of a common course numbering system.

Session Laws 1995 (Reg. Sess., 1996), c. 625, provides that the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall develop a plan to provide students with information regarding the transfer of credits between community colleges and between community colleges and the constituent institutions of The University of North Carolina, shall develop a timetable for development of guidelines and report to the General Assembly and the Joint Legislative Education Oversight Committee by January 15, 1997, and shall review policies and make any necessary changes by September 1, 1997.

Session Laws 1997-221, s. 12(d), provides that the Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by April 1, 1998, on a plan to coordinate and consolidate the professional development programs for professional public school employees.

Session Laws 1997-221, s. 1, provides: "This act shall be known as 'The Excellent Schools Act.'"

Session Laws 1997-221, s. 32, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Nothing in Sections 16 through 25 or Sections 28 through 30 of this act shall be construed to create any rights or causes of action."

Session Laws 1997-240, s. 3, except for the last sentence thereof, was codified as subsection (8a) of this section at the direction of the Revisor of Statutes.

Session Laws 1997-240, s. 1, provides: "The Board of Governors of The University of North Carolina shall review the admissions procedures, practices, and requirements of the constituent institutions regarding applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The Board of Governors shall consult with representatives from nonpublic schools, including representatives of nonpublic schools operated under Parts 1 and 3 of Article 39 of Chapter 115C of the General Statutes, while conducting the review."

Session Laws 1997-240, s. 2, provides: "Prior to September 15, 1997, the Board of Governors shall report to the Joint Legislative Education Oversight Committee the results of the review and its recommendations for a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The recommended policy shall take into consideration the results of the review and consultation required under Section 1 of this act."

Session Laws 1997-240, s. 3, provides in part: "The Board of Governors shall report the policy to the Joint Legislative Education Oversight Committee prior to November 21, 1997."

Effect of Amendments. — The 1997 amendment, effective June 24, 1997, added subsection (12a).

§ 116-12. Property and obligations.

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 4.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, inserted "redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke'" following "Pembroke State University" in the first and second sentences.

§ 116-15. Licensing of certain nonpublic post-secondary educational institutions.

(a1) The General Assembly of North Carolina in recognition of the importance of higher education and of the particular significance attached to the personal credentials accessible through higher education and in consonance with statutory law of this State making unlawful any "unfair or deceptive acts or practices in the conduct of any trade or commerce," hereby declares it the policy of this State that all institutions conducting post-secondary degree activity in this State that are not subject to Chapter 115 or 115D of the General Statutes, nor some other section of Chapter 116 of the General Statutes shall be subject to licensure under this section except as the institution or a particular activity of the institution may be exempt from licensure by one or another provision of this section.

(a2) Definitions. — As used in this section the following terms are defined as set forth in this subsection:

(1) "Post-secondary degree". — A credential conferring on the recipient thereof the title of "Associate", "Bachelor", "Master", or "Doctor", or an equivalent title, signifying educational attainment based on (i) study, (ii) a substitute for study in the form of equivalent experience or achievement testing, or (iii) a combination of the foregoing; provided, that "post-secondary degree" shall not include any honorary degree or other so-called "unearned" degree.

(2) "Institution". — Any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or university that engages in, purports to engage in, or intends to engage in any type of post-secondary degree activity.

(3) "Post-secondary degree activity". — Any of the following is "post-secondary degree activity":

a. Awarding a post-secondary degree.

b. Conducting or offering study, experience, or testing for an individual or certifying prior successful completion by an individual of study, experience, or testing, under the representation that the individual successfully completing the study, experience, or testing will be awarded therefor, at least in part, a post-secondary degree.

(4) "Publicly registered name". — The name of any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or institution that appears as the subject of any Articles of Incorporation, Articles of Amendment, or Certificate of Authority to Transact Business or to Conduct Affairs, properly filed with the Secretary of State of North Carolina and currently in force.

(5) "Board". — The Board of Governors of The University of North Carolina.

(b) Required License. — No institution subject to this section shall undertake post-secondary degree activity in this State, whether through itself or through an agent, unless the institution is licensed as provided in this section to conduct post-secondary degree activity or is exempt from licensure under this section as hereinafter provided.

(c) Exemption from Licensure. — Any institution that has been continuously conducting post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1972, shall be exempt from the provisions for licensure under this section upon presentation to the Board of information acceptable to the Board to substantiate such post-secondary degree activity and public registration of the institution's names. Any institution that, pursuant to a predecessor statute to this subsection, had presented to the Board proof of activity and registration such that the Board granted exemption from licensure, shall continue to enjoy such exemption without further action by the Board.

(d) Exemption of Institutions Relative to Religious Education. — Notwithstanding any other provision of this section, no institution shall be subject to licensure under this section with respect to post-secondary degree activity based upon a program of study, equivalent experience, or achievement testing the institutionally planned objective of which is the attainment of a degree in theology, divinity, or religious education or in any other program of study, equivalent experience, or achievement testing that is designed by the institution primarily for career preparation in a religious vocation. This exemption shall be extended to any institution with respect to each program of study, equivalent experience, and achievement test that the institution demonstrates to the satisfaction of the Board should be exempt under this subsection.

(e) Post-secondary Degree Activity within the Military. — To the extent that an institution undertakes post-secondary degree activity on the premises of military posts or reservations located in this State for military personnel stationed on active duty there, or their dependents, the institution shall be exempt from the licensure requirements of this section.

(f) Standards for Licensure. — To receive a license to conduct post-secondary degree activity in this State, an institution shall satisfy the Board that the institution has met the following standards:

(1) That the institution is State-chartered. If chartered by a state or sovereignty other than North Carolina, the institution shall also obtain a Certificate of Authority to Transact Business or to Conduct Affairs in North Carolina issued by the Secretary of State of North Carolina;

(2) That the institution has been conducting post-secondary degree activity in a state or sovereignty other than North Carolina during consecutive, regular-term, academic semesters, exclusive of summer sessions, for at least the two years immediately prior to submitting an application for licensure under this section, or has been conducting with enrolled students, for a like period in this State or some other state or sovereignty, post-secondary educational activity not related to a post-secondary degree; provided, that an institution may be temporarily relieved of this standard under the conditions set forth in subsection (i), below;

(3) That the substance of each course or program of study, equivalent experience, or achievement test is such as may reasonably and adequately achieve the stated objective for which the study, experience, or test is offered or to be certified as successfully completed;

(4) That the institution has adequate space, equipment, instructional materials, and personnel available to it to provide education of good quality;

(5) That the education, experience, and other qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive, or will be reliably certified to have received, education consistent with the stated objectives of any course or program of study, equivalent experience, or achievement test offered by the institution;

(6) That the institution provides students and other interested persons with a catalog or brochure containing information describing the substance, objectives, and duration of the study, equivalent experience, and achievement testing of-

fered, a schedule of related tuition, fees, and all other necessary charges and expenses, cancellation and refund policies, and such other material facts concerning the institution and the program or course of study, equivalent experience, and achievement testing as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures that may be specified by the Board; and that such information is provided to prospective students prior to enrollment;

(7) That upon satisfactory completion of study, equivalent experience, or achievement test, the student is given appropriate educational credentials by the institution, indicating that the relevant study, equivalent experience, or achievement testing has been satisfactorily completed by the students;

(8) That records are maintained by the institution adequate to reflect the application of relevant performance or grading standards to each enrolled student;

(9) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the safety and health of all persons upon the premises of the institution;

(10) That the institution is financially sound and capable of fulfilling its commitments to students and that the institution has provided a bond as provided in subsection (f1) of this section;

(11) That the institution, through itself or those with whom it may contract, does not engage in promotion, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;

(12) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, instructors, and employees of the institution have no record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution;

(13) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate;

(14) That the institution has a fair and equitable cancellation and refund policy; and

(15) That no person or agency with whom the institution contracts has a record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution.

(f1)(1) A guaranty bond is required for each institution that is licensed. The Board may revoke the license of an institution that fails to maintain a bond pursuant to this subsection.

If the institution has provided a bond pursuant to G.S. 115D-95, the Board may waive the bond requirement under this subsection. The Board may not waive the bond requirement under this subsection if the applicant has provided an alternative to a guaranty bond under G.S. 115D-95(c).

(2) When application is made for a license or license renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the institution will be located. The bond shall be in favor of the students. The

bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the institution to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of an institution's license, bankruptcy, foreclosure, or the institution ceasing to operate.

The bond shall be in an amount determined by the Board to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for an institution shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the institution. The bond amount shall also be at least ten thousand dollars ($10,000).

Each application for a license shall include a letter signed by an authorized representative of the institution showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(g) Review of Licensure. — Any institution that acquires licensure under this section shall be subject to review by the Board to determine that the institution continues to meet the standard for licensure of subsection (f), above. Review of such licensure by the Board shall always occur if the institution is legally reconstituted, or if ownership of a preponderance of all the assets of the institution changes pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements, or if two years has elapsed since licensure of the institution was granted by the Board.

Notwithstanding the foregoing paragraph, if an institution has continued to be licensed under this section and continuously conducted post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1979, or for six consecutive years, whichever is the shorter period, and is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation, such institution shall be subject to licensure review by the Board every six years to determine that the institution continues to meet the standard for licensure of subsection (f), above. However, should such an institution cease to maintain the specified accreditation, become legally reconstituted, have ownership of a preponderance of all its assets transferred pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements to a person or organization not licensed under this section, or fail to meet the standard for licensure of subsection (f), above, then the institution shall be subject to licensure review by the Board every two years until a license to conduct post-secondary degree activity and the requisite accreditation have been restored for six consecutive years.

(h) Denial and Revocation of Licensure. — Any institution seeking licensure under the provisions of this section that fails to meet the licensure requirements of this section shall be denied a license to conduct post-secondary degree activity in this State. Any institution holding a license to conduct post-secondary degree activity in this State that is found by the Board of Governors not to satisfy the licensure requirements of this section shall have its license to conduct post-secondary degree activity in this State revoked by the Board; provided, that the Board of Governors may continue in force the license of an institution deemed by the Board to be making substantial and expeditious progress toward remedying its licensure deficiencies.

(i) Regulatory Authority in the Board. — The Board shall have authority to establish such rules, regulations, and procedures as it may deem necessary or appropriate to effect the provisions of this section. Such rules, regulations, and procedures may include provision for the granting of an interim permit to conduct post-secondary degree activity in this State to an institution seeking licensure but lacking the two-year period of activity prescribed by subsection (f)(2), above.

(j) Enforcement Authority in the Attorney General. — The Board shall call to the attention of the Attorney General, for such action as he may deem appropriate, any institution failing to comply with the requirements of this section.

(k) Severability. — The provisions of this section are severable, and, if any provision of this section is declared unconstitutional or invalid by the courts, such declaration shall not affect the validity of the section as a whole or any provision other than the provision so declared to be unconstitutional or invalid. (1971, c. 1244, s. 1; 1973, c. 1331, s. 3; 1975, c. 268; 1977, c. 563, ss. 1-4; 1979, c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983 (Reg. Sess., 1984), c. 1006; 1989 (Reg. Sess., 1990), c. 824, s. 2; 1997-456, s. 27.)

Editor's Note. — The first paragraph of this section and subsection (a) of this section were renumbered as subsections (a1) and (a2) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 116-17.1. (Effective until December 31, 1999) Dependent care assistance program.

The Board of Governors of The University of North Carolina is authorized to provide eligible employees of constituent institutions a program of dependent care assistance as available under Section 129 and related sections of the Internal Revenue Code of 1986, as amended. The Board of Governors may authorize constituent institutions to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or

§ 116-17.1 is set out twice. See notes.

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all of the administrative expenses of the program. Should the Board of Governors decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, it may select a contractor only upon a thorough and completely competitive procurement process. (1989, c. 458, s. 3; 1991 (Reg. Sess., 1992), c. 1044, s. 14(d); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a).)

Section Set Out Twice. — The section above is effective until December 31, 1999. For this section as in effect December 31, 1999, see the following section, also numbered § 116-17.1.

Editor's Note. —

Session Laws 1997-443, s. 33.20(a) extended the expiration date to December 31, 1999.

§ 116-17.1. (Effective December 31, 1999) Dependent care assistance program.

The Board of Governors of The University of North Carolina is authorized to provide eligible employees of constituent institutions a program of dependent care assistance as available under Section 129 and related sections of the Internal Revenue Code of 1986, as amended. The Board of Governors may authorize constituent institutions to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. Should the Board of Governors decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, it may select a contractor only upon a thorough and completely competitive procurement process. (1989, c. 458, s. 3; 1991 (Reg. Sess., 1992), c. 1044, s. 14(d); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a).)

Section Set Out Twice. — The section above is effective December 31, 1999. For this section as in effect until December 31, 1999, see the preceding section, also numbered § 116-17.1.

Editor's Note. —

Session Laws 1997-443, s. 33.20(a) extended the expiration date to December 31, 1999.

§ 116-17.2. (Effective until December 31, 1999) Flexible Compensation Plan.

Notwithstanding any other provisions of law relating to the salaries of employees of The University of North Carolina, the Board of Governors of The University of North Carolina is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the Board of Governors may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. With the approval of the Director of

§ 116-17.2 is set out twice. See notes.

the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Board of Governors decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process. (1989 (Reg. Sess., 1990), c. 1059, s. 3; 1991 (Reg. Sess., 1992), c. 1044, s. 14(h); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a).)

Section Set Out Twice. — The section above is effective until December 31, 1999. For this section as in effect December 31, 1999, see the following section, also numbered § 116-17.2.

Editor's Note. — Session Laws 1997-443, s. 33.20(a) extended the expiration date of the amendment to December 31, 1999.

§ 116-17.2. (Effective December 31, 1999) Flexible Compensation Plan.

Notwithstanding any other provisions of law relating to the salaries of employees of The University of North Carolina, the Board of Governors of The University of North Carolina is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the Board of Governors may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the Board of Governors decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process. (1989 (Reg. Sess., 1990), c. 1059, s. 3; 1991 (Reg. Sess., 1992), c. 1044, s. 14(h); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a).)

Section Set Out Twice. — The section above is effective December 31, 1999. For this section as in effect until December 31, 1999, see the preceding section, also numbered § 116-17.2.

Editor's Note. — Session Laws 1997-443, s. 33.20(a) extended the expiration date of the amendment to December 31, 1999.

§ 116-19. Contracts with private institutions to aid North Carolina students.

Editor's Note. — Session Laws 1993, c. 321, s. 80, as amended by Session Laws 1996, Second Extra Session, c. 18, s. 16, Session Laws 1995, c. 324, s. 15, and Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 17, provides:

"(a) Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22. These funds shall provide up to six hundred dollars ($600.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each fiscal year.

"These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be for the tuition grant program as defined in subsection (b) of this section.

"(b) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, not to exceed one thousand three hundred ($1,300) per academic year, which shall be distributed to the student as hereinafter provided.

"The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

"In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

"In the event there are not sufficient funds to provide each eligible student with a full grant:

"(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and

"(2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

"Any remaining funds shall revert to the General Fund.

"(c) Expenditures made pursuant to this section shall be used only for secular educational purposes at nonprofit institutions of higher learning. Expenditures made pursuant to this section shall not be used for any student who:

"(1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or

"(2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years.

"(d) The State Education Assistance Authority shall document the number of full-time equivalent North Carolina undergraduate students that are enrolled in off-campus programs and the State funds collected by each institution pursuant to G.S. 116-19 for those students. The State Education Assistance Authority shall also document the number of scholarships and the amount of the scholarships that are awarded under G.S. 116-19 to students enrolled in off-campus programs. An 'off-campus program' is any program offered for degree credit away from the institution's main permanent campus.

"The State Education Assistance Authority shall report to the Joint Legislative Commission on Governmental Operations by March 1, 1997, regarding its findings."

For provisions similar to Session Laws 1993, c. 321, s. 80, see also Session Laws 1997-443, s. 10.4.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 10, provided for the disbursement of funds appropriated in that act to the Board of Governors of The University of North Carolina for continuation of financial assistance to the medical schools of Duke University and Wake Forest University.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 116-22. Definitions applicable to §§ 116-19 to 116-22.

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students by Session Laws 1995, c. 324, see the Editor's Note under G.S. 116-19.

Part 2A. Fiscal Accountability and Flexibility.

§ 116-30.01. North Carolina Teacher Academy Board of Trustees.

(a) The North Carolina Teacher Academy Board of Trustees shall establish a statewide network of high quality, integrated, comprehensive, collaborative, and substantial professional development for teachers, which shall be provided through summer programs.

(b) The Board of Governors of The University of North Carolina shall delegate to the Board of Trustees all the powers and duties the Board of Governors considers necessary or appropriate for the effective discharge of the functions of the North Carolina Teacher Academy.

(c) The Board of Trustees shall consist of 20 members appointed as follows:

(1) The Superintendent of Public instruction or the Superintendent's designee;
(2) One member of the State Board of Education appointed by the Chair of the State Board;
(3) One member of the Board of Governors of The University of North Carolina appointed by the Chair of the Board of Governors;
(4) The Director of the North Carolina Center for the Advancement of Teaching;
(5) Two deans of Schools of Education appointed by the President of The University of North Carolina;
(6) Four public school teachers appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of

whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches on grades 9 through 12;

(7) Four public school teachers appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches on grades 9 through 12;

(8) Two public school teachers appointed by the Governor;

(9) One superintendent of a local school administrative unit appointed by the Governor;

(10) Two public school principals appointed by the Governor; and

(11) The President of the North Carolina Association of Independent Colleges and Universities, or a designee.

(d) Members appointed prior to September 1, 1995, shall serve until June 30, 1997, except that the terms of members appointed pursuant to subdivisions (6) and (7) of subsection (d) of this section shall expire June 30, 1995. Subsequent appointments shall be for four-year terms, except that two of the members appointed by the 1995 General Assembly pursuant to subdivision (6) of subsection (d) of this section and two of the members appointed by the 1995 General Assembly pursuant to subdivision (7) of subsection (d) of this section shall serve for two-year terms.

Members may serve two consecutive four-year terms.

Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

The Board of Trustees shall elect a new chair every two years from its membership. The chair may serve two consecutive two-year terms as chair.

(e) The chief administrative officer of the Teacher academy shall be a director appointed by the Board of Trustees.

(f) The Board of trustees shall collaborate and coordinate its programming with NCCAT [North Carolina Center for the Advancement of Teaching]. (1995, c. 324, s. 17.9.)

Editor's Note. — Session Laws 1995, c. 324, s. 17.9(a) was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 17.9, provides in part:

"(a) The Task Force on Teacher Staff Development established by Section 141 of Chapter 321 of the 1993 Session Laws, all funds appropriated by the General Assembly for the Task Force and the Teacher Academy Program, and all resources and personnel provided for the Task Force and the Teacher Academy Program by the Department of Public Instruction are transferred from the Department of Public Instruction to The University of North Carolina. This transfer shall have all of the elements of a Type I transfer, as that term is defined in G.S. 143A-6(a). Where a conflict arises in connection with the transfer, the transfer shall be resolved by the Governor, and the decision of the Governor shall be final.

"The Task Force is renamed the North Carolina Teacher Academy Board of Trustees.

"(b) Subsection (g) of Section 141 of Chapter 321 of the 1993 Session Laws is repealed.

"(h) The Board of Trustees shall report on its summer programs to the Joint Legislative Education Oversight Committee prior to November 1, 1995.

"(j) This section becomes effective September 1, 1995, except that the General Assembly may make appointments pursuant to subsection (d) of this section [subsection (c) above] prior to September 1, 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

§ 116-30.1. Special responsibility constituent institutions.

The Board of Governors of The University of North Carolina, acting on recommendation made by the President of The University of North Carolina after consultation by him with the State Auditor, may designate one or more constituent institutions of The University as special responsibility constituent institutions. That designation shall be based on an express finding by the Board of Governors that each institution to be so designated has the management staff and internal financial controls that will enable it to administer competently and responsibly all additional management authority and discretion to be delegated to it. The Board of Governors, on recommendation of the President, shall adopt rules prescribing management staffing standards and internal financial controls and safeguards, including the lack of any significant findings in the annual financial audit by the State Auditor's Office, that must be met by a constituent institution before it may be designated a special responsibility constituent institution and must be maintained in order for it to retain that designation. These rules shall not be designed to prohibit participation by a constituent institution because of its size. These rules shall establish procedures for the President and his staff to review the annual financial audit reports, special reports, electronic data processing reports, performance reports, management letters, or any other report issued by the State Auditor's Office for each special responsibility constituent institution. The President shall take immediate action regarding reported weaknesses in the internal control structure, deficiencies in the accounting records, and noncompliance with rules and regulations. In any instance where significant findings are identified, the President shall notify the Chancellor of the particular special responsibility constituent institution that the institution must make satisfactory progress in resolving the findings, as determined by the President of The University, after consultation with the State Auditor, within a three-month period commencing with the date of receipt of the published financial audit report, any other audit report, or management letter. If satisfactory progress is not made within a three-month period, the President of The University shall recommend to the Board of Governors at its next meeting that the designation of the particular institution as a special responsibility constituent institution be terminated until such time as the exceptions are resolved to the satisfaction of the President of The University of North Carolina, after consultation with the State Auditor. However, once the designation as a special responsibility constituent institution has been withdrawn by the Board of Governors, reinstatement may not be effective until the beginning of the following fiscal year at the earliest. Any actions taken by the Board of Governors with respect to withdrawal or reinstatement of an institution's status as a special responsibility constituent institution shall be reported immediately to the Joint Legislative Education Oversight Committee.

The rules established under this section shall include review by the President, after consultation with the State Auditor, the Director of the Office of State Personnel, and the Director of the Division of State Purchasing and Contracts in ascertaining whether or not a constituent institution has the management staff and internal financial controls to administer the additional authorities authorized under G.S. 116-30.2, 116-30.4, and 143-53.1. Such review and consultation must take place no less frequently than once each biennium. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1996, 2nd Ex. Sess., c. 18, s. 7.4(k); 1997-71, s. 1.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, in the first paragraph added the fifth sentence through the end of the paragraph, and added the second paragraph.

The 1997 amendment, effective May 22, 1997, in the first paragraph deleted "exceptions or audit" following "of any significant" in the third sentence, substituted "reports, special reports, electronic data processing reports, performance reports, management letters, or any other report issued by the State Auditor's" for "reports or any other special or performance reports issued by the State Auditors" following "annual financial audit" in the fifth sentence, substituted "significant findings" for "such audit exceptions" following "any instance where", substituted "the institution must make satisfactory progress in resolving the finding, as determined by the President of The University, after consultation with the State Auditor" for "such exceptions must be resolved to the satisfaction of the State Auditor and" following "constituent institution that" in the seventh sentence, substituted "report, any other audit report, or management letter. If satisfactory progress is not made" for "report. If the exceptions are not satisfactorily resolved" following "published financial audit" in the 8th sentence, and substituted "the President of The University of North Carolina, after consultation with the State Auditor" for "the State Auditor and the President of The University of North Carolina" following "to the satisfaction of" in the 8th sentence; and in the second paragraph substituted "by the President, after" for "and" following "shall include review".

§ 116-30.2. Appropriations to special responsibility constituent institutions.

All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 143-23(a3) and G.S. 120-76(8), each special responsibility constituent institution may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(c); 1996, 2nd Ex. Sess., c. 18, s. 7.4(i); 1997-443, s. 10.8.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, inserted "and G.S. 120-76(8)."

The 1997 amendment, effective July 1, 1997, inserted "monies from the overhead receipts special fund budget code and" in the second sentence.

§ 116-30.3. Reversions.

(a) Of the General Fund current operations appropriations credit balance remaining at the end of each fiscal year in each budget code of a special responsibility constituent institution, except for the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount greater than two percent (2%) of the General Fund appropriation for that fiscal year may be carried forward by the institution to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. Of the General Fund current operations appropriations credit balance remaining in the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount greater than one percent (1%) of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143-25, shall establish the General Fund current operations credit balance remaining in each budget code of each institution.

(b) An institution shall cease to be a special responsibility constituent institution under the following circumstances:

(1) An institution, other than the Area Health Education Centers of the University of North Carolina, does not revert at least two percent (2%) of its General Fund current operations credit balance remaining in each budget code of that institution, or

(2) The Area Health Education Centers of the University of North Carolina at Chapel Hill does not revert at least one percent (1%) of its General Fund current operations credit balance remaining in its budget code.

However, if the Board of Governors finds that the low reversion rate is due to adverse and unforeseen conditions, the Board may allow the institution to remain a special responsibility constituent institution for one year to come into conformity with this section. The Board may make this exception only one time for any special responsibility constituent institution, and shall report these exceptions to the Joint Legislative Commission on Governmental Operations.

(c) One-half of the reversions required in subsection (a) and (b) of this section shall be returned to the General Fund credit balance at the end of each fiscal year.

(d) For fiscal year 1997-98 and each subsequent fiscal year, one-half of the reversions required in subsections (a) and (b) of this section shall be available to each special responsibility constituent institution of The University of North Carolina. Those funds shall be used by the institution at the campus level for any of the following: the nonrecurring costs of technology, including the installation of technology infrastructure for academic facilities on the campus of the special responsibility constituent institution, the implementation by the constituent institution of its campus technology plan as approved by the Board of Governors, or for libraries. The funds shall not be used to support positions. Each special responsibility constituent institution shall report annually to the Board of Governors regarding how the institution spent the funds made available under this section. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1995, c. 507, s. 15.16; 1997-443, s. 10.19.)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 16.2, provides that, notwithstanding G.S. 116-30.3, the five constituent institutions cited in the study of equity of funding among the constituent institutions of the University of North Carolina as receiving lower than average pupil funding shall not be required to revert two percent of their General Fund appropriations for the 1996-97 school year.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added subsections (c) and (d).

Part 3. Constituent Institutions.

§ 116-31.10. Powers of Board regarding certain purchasing contracts.

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars ($250,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark. (1997-412, s. 1.)

Editor's Note. — Session Laws 1997-412, s. 13, provides that the Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2), and shall report its findings and recommendations to the General Assembly by April 15, 2001.

Session Laws 1997-412, s. 14, made this section effective January 1, 1998.

§ 116-31.11. (See editor's note for expiration date) Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of five hundred thousand dollars ($500,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section. (1997-412, s. 1.)

Editor's Note. — Session Laws 1997-412, s. 12, provides that the Office of State Budget and Management and the State Building Commission shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by that act, and shall jointly report their findings and recommendations to the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001. The Board of Governors of The University of North Carolina shall report to the Joint Legislative Commission on Governmental Operations, the State Building Commission, and the Director of the Budget no later than December 1, 1997, on the procedures it intends to implement pursuant to G.S. 116-31.11, and the State Building Commission shall report to the

General Assembly no later than June 1, 1998, with respect to action taken pursuant to G.S. 116-31.11(a)(3) and (b).

Session Laws 1997-412, s. 14, made this section effective January 1, 1998, and provided that this section expires on July 1, 2001.

§ 116-34. Duties of chancellor of institution.

CASE NOTES

Quoted in Simonel v. North Carolina Sch. of Arts, 119 N.C. App. 772, 460 S.E.2d 194 (1995).

§ 116-36.4. Vending facilities.

Each institution shall provide to the director of the Budget and the State Auditor such information as they may from time to time require concerning the use of net proceeds from operations of vending facilities for the previous fiscal year under G.S. 116-36.1. Net proceeds may be used only as authorized by the Board of Governors, but this section does not authorize expenditures for purposes not otherwise authorized by law. (1983 (Reg. Sess., 1984), c. 1034, s. 172; 1987, c. 738, s. 233(b); 1993, c. 406, s. 1; 1995, c. 507, s. 15.7.)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 116-36.6. East Carolina University School of Medicine; Medicare receipts.

The East Carolina University School of Medicine shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds shall be allocated as follows:

(1) The portion of the Medicare reimbursement generated through the effort and expense of the School of Medicine's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.

(2) The funds from this source budgeted by the General Assembly as part of the School of Medicine's General Fund budget code shall be credited to that code as a receipt.

(3) The remainder of the funds shall be transferred to a special fund account on deposit with the State Treasurer. This special fund account shall be used for any necessary repayment of Medicare funds due to final audit settlements for funds allocated under subdivision (2) of this subsection. When the amount of these reimbursement funds has been

finalized by audit for each year, those funds remaining in the special fund shall be available for specific capital improvement projects for the East Carolina University School of Medicine. Requests by East Carolina University for use of these funds shall be made to the Board of Governors of The University of North Carolina. Approval of projects by the Board of Governors shall be reported to the Joint Legislative Commission on Governmental Operations, and the reports shall include projected costs and sources of funds for operation of the approved projects. (1995, c. 507, s. 15.4.)

Editor's Note. — Session Laws 1995, c. 507, s. 28.13 made this section effective July 1, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 116-37.1. Center for public television.

(a) The Board of Governors is hereby authorized and directed to establish "the University of North Carolina Center for Public Television" (hereinafter called "the Center"). It shall be the functions of the Center, through itself or agencies with whom it may contract, to provide research, development, and production of noncommercial educational television programming and program materials; to provide distribution of noncommercial television programming through the broadcast facilities licensed to the University of North Carolina; and otherwise to enhance the uses of television for public purposes.

(b) The Center shall have a board of trustees, to be named "the Board of Trustees of the University of North Carolina Center for Public Television" (hereinafter called "the Board of Trustees"). The Board of Governors is hereby authorized and directed to establish the Board of Trustees of the Center and to delegate to the Board of Trustees such powers and duties as the Board of Governors deems necessary or appropriate for the effective discharge of the functions of the Center; provided, that the Board of Governors shall not be deemed by the provisions of this section to have the authority to delegate any responsibility it may have as licensee of the broadcast facilities of the University of North Carolina.

(1) The Board of Trustees of the University of North Carolina Center for Public Television shall be composed of the following membership: 11 persons appointed by the Board of Governors; four persons appointed by the Governor; two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121; and ex officio, the Secretary of the Department of Cultural Resources, the Secretary of the Department of Health and Human Services, the Superintendent of Public Instruction, the President of the Community College System, and the President of the University of North Carolina. In making initial appointments to the Board of Trustees, the Board of Governors shall designate six persons for two-year terms

and five persons for four-year terms, and the Governor shall designate two persons for two-year terms and two persons for four-year terms. The initial members appointed to the Board of Trustees by the General Assembly shall serve for terms expiring June 30, 1983, and notwithstanding anything else in this section, their successors shall be appointed in 1983 and biennially thereafter for two-year terms. Thereafter, the term of office of appointed members of the Board of Trustees of the Center shall be four years. In making appointments to the Board of Trustees the appointing authorities shall give consideration to promoting diversity among the membership, to the end that, in meeting the responsibilities delegated to it, the Board of Trustees will reflect and be responsive to the diverse needs, interests, and concerns of the citizens of North Carolina.

(2) No person shall be appointed to the Board of Trustees who is an employee of the State or of any constituent institution; a public officer of the State as defined in G.S. 147-1, 147-2, and 147-3(c); a member of the Board of Governors; a trustee of a constituent institution; or the spouse of any of the foregoing. Any appointed member of the Board of Trustees who after appointment becomes any of the foregoing shall be deemed to have resigned from the Board of Trustees.

(3) Each ex officio member of the Board of Trustees shall personally serve on the Board of Trustees but may designate in writing a proxy for specified meetings which the ex officio member finds he or she is unable reasonably to attend.

(4) Each appointive member of the Board of Trustees shall personally serve on the Board of Trustees without benefit of proxy. Any appointive member who fails, for any reason other than ill health or service in the interest of the State or the nation, to attend three consecutive regular meetings of the Board of Trustees, shall be deemed to have resigned from the Board of Trustees.

(5) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies occurring during a term among the appointive membership of the Board of Trustees shall be filled for the remainder of the unexpired term by appointment of the original appointing authority for the vacant seat. The principal officer of the Board of Trustees shall promptly notify the Secretary of the University of North Carolina of the vacancy and the Secretary shall give written notice of the vacancy to the appropriate appointing authority.

(c) The chief administrative officer of the Center shall be a Director, who shall be elected by the Board of Governors upon recommendation of the President and who shall be responsible to the President. The Center shall have such other staff as the Board of Governors may authorize. (1979, c. 649, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 54, 55; 1987, c. 564, § 33; 1995, c. 490, s. 61; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 116-40.5. Campus law enforcement agencies.

(a) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, may establish a campus law enforcement agency and employ campus police officers. Such officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the institution employing him and that portion of any public road or highway passing through such property and immediately adjoining it, wherever located.

(b) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(c) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any county, and with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted. (1987, c. 671, s. 2; 1997-194, s. 1.)

Effect of Amendments. — The 1997 amendment, effective June 19, 1997, added "or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina" following "North Carolina" in subsections (a) through (c).

Part 4A. Distinguished Professors Endowment Trust Fund.

§ 116-41.18. Distinguished Professors Endowment Trust Fund; selection of Distinguished Professors.

(a) Each constituent institution that receives, through private gifts and an allocation by the Board of Governors, funds for the purpose shall, under procedures established by rules of the Board of

Governors and the board of trustees of the constituent institution, select a holder of the Distinguished Professorship. Once given, that designation shall be retained by the distinguished professor as long as he remains in the full-time service of the institution as a faculty member, or for more limited lengths of time when authorized by the Board of Governors and the board of trustees at the institution when the Distinguished Professorship is originally established or vacated. When a distinguished professorship becomes vacant, it shall remain assigned to the institution and another distinguished professor shall be selected under procedures established by rules of the Board of Governors and the board of trustees of the constituent institution.

(a1) No rule shall prevent the constituent institutions of The University of North Carolina from selecting holders of Distinguished Professorships from among existing faculty members or newly hired faculty members.

(b) The Board of Governors of The University of North Carolina shall promulgate rules to implement this section.

(c) There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of two million dollars ($2,000,000) for fiscal year 1985-86, and the sum of two million dollars ($2,000,000) for fiscal year 1986-87, to implement this section. (1985, c. 757, s. 202; 1991 (Reg. Sess., 1992), c. 1030, s. 31; 1995, c. 507, s. 15.12; 1997-443, s. 10.6.)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added "as a faculty member, or for more limited lengths of time when authorized by the Board of Governors and the board of trustees at the institution when the Distinguished Professorship is originally established or vacated" at the end of the second sentence of subsection (a).

Part 7. Fire Safety.

§ 116-44.6. Definitions.

Unless the context clearly requires another meaning, the following definitions apply in this Part:

(1) Fraternity or sorority. — A social, professional, or educational incorporated organization that, by official recognition, is affiliated or identified with a public or nonpublic institution of higher education in this State and which maintains a living facility that provides accommodations for five or more students enrolled at the recognition-granting institution of higher education.

(2) Fund. — The Fire Safety Loan Fund authorized by this Part.

(3) Living facility. — A sleeping facility capable of overnight accommodation and other capabilities which support continuous occupancy.

(4) Residence hall. — A living facility maintained by a public or nonpublic institution of higher education in North Carolina

or by the North Carolina School of Science and Mathematics for use by enrolled students.

(5) Supplemental fire safety protection system. — A water system capability which is sized to accommodate the added water supply pressure and volume required for building fire protection.

(6) Water system. —
  a. A city, county, or sanitary district; or
  b. A water and sewer authority, a metropolitan water district, or county water and sewer district, established pursuant to Chapter 162A of the General Statutes. (1996, 2nd Ex. Sess., c. 18, s. 16.5(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 16.5(b) and (c), provide: "(b) Of the funds allocated by this act to the Board of Governors of The University of North Carolina from the Reserve for Repairs and Renovations, the sum of one million two hundred sixty-three thousand eight hundred three dollars ($1,263,803) for the 1996-97 fiscal year shall be used to add central fire alarm and warning systems to residence halls at the constituent institutions of The University and at the North Carolina School of Science and Mathematics that are not currently so equipped. The central alarm and warning systems to be installed shall be interconnected with a supervisory campuswide system of reporting into a station that is continuously monitored.

"(c) Of the funds appropriated to the Office of the State Treasurer, the sum of one million dollars ($1,000,000) for the 1996-97 fiscal year shall be used for the purpose of establishing the Fire Safety Loan Fund for installing fire safety equipment and systems in fraternity and sorority housing at public and nonpublic institutions of higher education located in North Carolina as authorized by G.S. 116-44.8."

Session Laws 1996, Second Extra Session, c. 18, s. 16.5(d), made this Part effective upon ratification. The Act was ratified August 3, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 116-44.7. Exemption from certain fees and charges.

No water system serving a residence hall or fraternity or sorority housing shall levy or collect any water-meter fee, water-hydrant fee, tap fee, or similar service fee on a residence hall or fraternity or sorority house with respect to supporting a supplemental fire safety protection system in excess of the marginal cost to the water system to support the fire safety protection system. (1996, 2nd Ex. Sess., c. 18, s. 16.5(a); 1997-443, s. 10.14.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "marginal cost" for "actual cost" near the end of the section.

§ 116-44.8. Fire Safety Loan Fund.

(a) There is established the Fire Safety Loan Fund. The Fund shall be a revolving loan fund for installing fire safety equipment and systems in fraternity and sorority housing.

(b) The Fund shall be administered by the Office of the State Treasurer, and that office may establish the policies and procedures that it deems appropriate for the operation of the Fund. The Office of the State Treasurer may enlist the assistance of other State departments or entities which have expertise that would be useful in administering the Fund, and those State departments or entities shall provide the assistance requested.

(c) The Fund shall be operated on a revolving basis with proceeds from the repayment of prior loans being made available for subsequent loans.

(d) Loans from the Fund shall be secured by a first or second mortgage or other pledge. Loans shall be made for a period not to exceed 10 years. Interest shall not be charged on loans from the Fund. (1996, 2nd Ex. Sess., c. 18, s. 16.5(a).)

§ 116-44.9: Reserved for future codification purposes.

Article 5A.

Center for Advancement of Teaching.

§ 116-74.7. Composition of board of trustees; terms; officers.

(a) The NCCAT Board of Trustees shall be composed of the following membership:

(1) Three ex officio members: the President of The University of North Carolina, the State Superintendent of Public Instruction, and the Chancellor of Western Carolina University;
(2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;
(3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(4) Eight members appointed by the Board of Governors, one from each of the eight educational regions.

The appointing authorities shall give consideration to assuring, through Board membership, the statewide mission of NCCAT.

(b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members may serve two consecutive four-year terms. The Board shall elect a new chairman every two years from its membership. The Chairman may serve two consecutive two-year terms as chairman.

The chief administrative officer of NCCAT shall be a director, who shall be appointed by the NCCAT Board of Trustees. (1985, c. 479, s. 74; 1995, c. 490, s. 2.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

ARTICLE 5B.

School Administrator Training Programs.

§ 116-74.21. Establishment of a competitive proposal process for school administrator programs.

(a) The Board of Governors shall develop and implement a competitive proposal process and criteria for assessing proposals to establish school administrator training programs within the constituent institutions of The University of North Carolina. To facilitate the development of the programs, program criteria, and the proposal process, the Board of Governors may convene a panel of national school administrator program experts and other professional training program experts to assist it in designing the program, the proposal process, and criteria for assessing the proposals.

(b) No more than eight school administrator programs shall be established under the competitive proposal program. In selecting campus sites, the Board of Governors shall be sensitive to the racial, cultural, and geographic diversity of the State. Special priority shall be given to the following factors: (i) the historical background of the institutions in training educators; (ii) the ability of the sites to serve the geographic regions of the State, such as, the far west, the west, the triad, the piedmont, and the east; and, (iii) whether the type of roads and terrain in a region make commuting difficult. A school administrator program may provide for instruction at one or more campus sites.

(c) The Board of Governors shall study the issue of supply and demand of school administrators to determine the number of school administrators to be trained in the programs in each year of each biennium. The Board of Governors shall report the results of this study to the Joint Legislative Education Oversight Committee no later than March 1, 1994, and annually thereafter.

(d) The Board of Governors shall develop a budget for the programs established under subsection (a) of this section that reflects the resources necessary to establish and operate school administrator programs that meet the vision of the report submitted to the 1993 General Assembly by the Educational Leadership Task Force.

(e) The Board of Governors shall report annually on the implementation of the act no later than December 1 of each year. (1993, c. 199, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 13; 1995, c. 507, s. 27.2(a).)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 27.2(b), provides: "The Board of Governors of The University of North Carolina shall continue the Master of School Administrators program at Appalachian State University as one of the eight school administrator programs established pursuant to G.S. 116-74.21."

ARTICLE 10.

State School for the Blind and the Deaf in Raleigh.

§§ 116-105 through 116-119: Transferred to §§ 115-321 to 115-335 by Session Laws 1963, c. 448, s. 28.

Editor's Note. — Chapter 115 was repealed by Session Laws 1981, c. 423, and superseded by Chapter 115C; parts of Chapter 115C were subsequently recodified in Chapter 143B. As to State schools for hearing-impaired children, see now §§ 143B-216.40 through 143B-216.44. As to State school for sight-impaired children, see now §§ 143B-164.10 and 143B-164.13.

ARTICLE 11.

North Carolina School for the Deaf at Morganton.

§ 116-120: Transferred to § 115-336 by Session Laws 1963, c. 448, s. 28.

Editor's Note. — Chapter 115 was repealed by Session Laws 1981, c. 423, and superseded by Chapter 115C; parts of Chapter 115C were subsequently recodified in Chapter 143B. As to State schools for hearing-impaired children, see now §§ 143B-216.40 through 143B-216.44.

ARTICLE 11A.

Eastern North Carolina School for the Deaf and North Carolina School for the Deaf at Morganton.

§§ 116-125.1 through 116-125.5: Transferred to §§ 115-337 to 115-341 by Session Laws 1963, c. 448, s. 28.

Editor's Note. — Chapter 115 was repealed by Session Laws 1981, c. 423, and superseded by Chapter 115C; parts of Chapter 115C were subsequently recodified in Chapter 143B. As to State schools for hearing-impaired children, see now §§ 143B-216.40 through 143B-216.44.

ARTICLE 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

§ 116-143. State-supported institutions of higher education required to charge tuition and fees.

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9,

provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 15.15, provides that the Board of Trustees of a constituent institution of The University of North Carolina designated as a Research University I campus, or which has a professional school or masters degree in Business Administration, may increase tuition at that institution, notwithstanding G.S. 116-143, and provides for the allocation of revenues derived from the increase.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 10.21, provides that the Board of Governors of The University of North Carolina may set tuition rates for students in the Masters of Business Administration and the Masters of Accounting programs of the School of Business at the University of North Carolina at Chapel Hill that are higher than those currently set pursuant to G.S. 116-143. The Board of Governors is also to conduct a study of tuition levels and adjust tuition rates to align with policies on tuition differentials, and report to the Joint Legislative Education Oversight Committee by January 15, 1999, regarding the findings of its study.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 116-143.1. Provisions for determining resident status for tuition purposes.

CASE NOTES

Legal Residence of Parents Not Prima Facie Evidence of Residence. — Although university student's parents were domiciled outside North Carolina, the legal residence of her parents was not prima facie evidence of her legal residence since she had lived in this state five consecutive years prior to enrolling at the university. Fain v. State Residence Comm., 117 N.C. App. 541, 451 S.E.2d 663, aff'd, 342 N.C. 402, 464 S.E.2d 43 (1995).

§ 116-143.3. Tuition of personnel in the armed services.

(a) For purposes of this section the term "armed services" shall mean the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the North Carolina National Guard; and any Reserve Component of the foregoing. The term "abode" shall mean the place where a person actually lives, whether temporarily or permanently; the term "abide" shall mean to live in a given place.

(b) Any member of the armed services qualifying for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3) but not qualifying as a resident for tuition purposes under G.S. 116-143.1 shall be charged the out-of-State tuition rate; provided, that the out-of-State tuition shall be forgiven to the extent that the out-of-State tuition rate exceeds any amounts payable to the institution or the service member by the service member's employer by reason of enrollment pursuant to such admission while the member is abiding in this State incident to active military duty, plus the amount that represents the percentage of the out-of-State tuition rate paid to the institution or the service member by the service member's employer multiplied by the in-State tuition rate and then subtracted from the in-State tuition rate. Any member of the armed services who does not qualify for any payment by the member's employer shall be eligible to be charged the in-State tuition rate and shall pay the full amount of the in-State tuition rate.

(c) Any dependent relative of a member of the armed services who is abiding in this State incident to active military duty, as defined by the Board of Governors of The University of North Carolina and by the State Board of Community Colleges while sharing the abode of that member shall be eligible to be charged the in-State tuition rate, if the dependent relative qualifies for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3). The dependent relatives shall comply with the requirements of the Selective Service System, if applicable, in order to be accorded this benefit. In the event the member of the armed services removes his abode from North Carolina during an academic year, the dependent relative shall continue to be eligible for the in-State tuition rate during the remainder of that academic year.

(d) The burden of proving entitlement to the benefit of this section shall lie with the applicant therefor.

(e) A person charged less than the out-of-State tuition rate solely by reason of this section shall not, during the period of receiving that benefit, qualify for or be the basis of conferring the benefits of G.S. 116-143.1(g), (h), (i), (j), (k), or (*l*). (1983 (Reg. Sess., 1984), c. 1034, s. 57; 1985, c. 39, s. 1; c. 479, s. 69; c. 757, s. 154; 1987, c. 564, § 7; 1997-443, s. 10.2.)

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students by Session Laws 1995, c. 324, see the Editor's Note under G.S. 116-19.

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added the last sentence of subsection (b).

§ 116-143.5. Tuition of certain teachers.

Notwithstanding G.S. 116-143.1, any teacher or other personnel paid on the teacher salary schedule who (i) has established a legal residence (domicile) in North Carolina and (ii) is employed full-time by a North Carolina public school, shall be eligible to be charged the in-State tuition rate for courses relevant to teacher certification or to professional development as a teacher. (1997-443, s. 8.22(c).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Session Laws 1997-443, s. 35.5, made this section effective July 1, 1997.

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-183. Acceptance of grants; exemption from taxation.

The Board is hereby authorized, subject to the approval of the Director of the Budget, to accept grants of money or materials or property of any kind for any project from a federal agency, private agency, corporation or individual, upon such terms and conditions as such federal agency, private agency, corporation or individual may impose. The bonds issued under this Article are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1957, c. 1131, s. 9; 1983, c. 577, s. 6; 1995, c. 46, s. 6.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the second sentence deleted "the provisions of" following "issued under", and substituted "are exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes" for "and the income therefrom shall at all times be free from taxation within the State", and added the third sentence.

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ 116-196. Exemption from taxation; bonds eligible for investment or deposit.

Any bonds issued under this Article shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency or other instrumentality of the State, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1963, c. 847, s. 10; 1995, c. 46, s. 7.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the first sentence deleted "including any of such bonds constituting a part of the surplus of any bank, trust company, or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest and redemption premiums, if any)" following "Article" and added "excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes" to the end; and added the second sentence.

ARTICLE 21B.

Centennial Campus Financing Act.

§ 116-198.39. Bonds are exempt from taxation.

Any bonds issued under this Article shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency, or other instrumentality of the State, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1987, c. 336, s. 1; 1995, c. 46, s. 8.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the first sentence deleted "including any of such bonds constituting a part of the surplus of any bank, trust company, or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest and redemption premiums, if any)" following "Article" and added "excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes" to the end; and added the second sentence.

ARTICLE 22.

Visiting Speakers at State-Supported Institutions.

§§ 116-199, 116-200: Repealed by Session Laws 1995, c. 379, s. 17, effective July 6, 1995.

ARTICLE 23.

State Education Assistance Authority.

§ 116-209.13. Tax exemption.

The exercise of the powers granted by this Article in all respects will be for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any taxes on any property owned by the Authority under the provisions of this Article or upon the income therefrom, and the bonds issued under the provisions of this Article shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. (1967, c. 1177; 1995, c. 46, s. 9.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the first sentence deleted "their transfer and the income therefrom (including any profit made on the sale thereof)" following the third occurance of "Article", and added "income taxes on the gain from the transfer of the bonds, and franchise taxes" to the end, and added the last sentence.

§ 116-209.25. Parental Savings Trust Fund.

(a) Policy. — The General Assembly of North Carolina hereby finds and declares that encouraging parents and other interested parties to save for the postsecondary education expenses of eligible students is fully consistent with and furthers the long-established policy of the State to encourage, promote, and assist education as more fully set forth in G.S. 116-201(a).

(b) Parental Savings Trust Fund. — There is established a parental savings trust fund to be administered by the State Education Assistance Authority to enable qualified parents to save funds to meet the costs of the postsecondary education expenses of eligible students.

(c) Contributions to the Trust Fund. — The Authority is authorized to accept, hold, and disburse contributions, and interest earned on such contributions, from qualified parents and other interested parties in the Parental Savings Trust Fund. The contributions to the Parental Savings Trust Fund shall be held by the Authority in a separate institutional trust fund and, as such, contributions to the trust fund shall be invested by the State Treasurer as authorized in G.S. 147-69.2(b)(1) through (6) and the applicable provisions of G.S. 147-69.3. The contributions to the Parental Savings Trust Fund shall not be considered State moneys, assets of the State, or State revenue for any purpose.

(d) Administration of the Trust Fund. — The Authority is authorized to develop and perform all functions necessary and desirable to administer the Parental Savings Trust Fund and to provide such other services as the Authority shall deem necessary to facilitate participation in the Parental Savings Trust Fund.

(e) Loan Program. — The Authority is authorized to develop and administer a loan program in conjunction with the Parental Savings Trust Fund to provide loan assistance to qualified parents and interested parties in order to facilitate the postsecondary education of eligible students. All funds appropriated to, or otherwise received by the Authority for loans under this section, all funds received as repayment of such loans, and all interest earned on these funds shall be placed in an institutional trust fund. This institutional trust fund may be used only for loans made to qualified parents and interested parties who contributed to the Parental Savings Trust Fund and administrative costs associated with the recovery of funds advanced under this loan program. (1996, 2nd Ex. Sess., c. 18, s. 16.7.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this section effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 116-209.30. Social Workers' Education Loan Fund.

(a) There is established the Social Workers' Education Loan Fund to be administered by the State Education Assistance Authority, in consultation with the Department of Health and Human Services, to attract trained social workers into public child welfare positions in all county departments of social services in the State. The Fund shall provide 25 four-year undergraduate and 10 two-year graduate scholarship loans per year.

(b) The Authority, in consultation with the Department of Health and Human Services, shall develop the following criteria to administer the Fund:

(1) All students shall be enrolled in an institution of higher education in North Carolina in an accredited bachelors of social work or masters of social work program;

(2) All students shall be residents of North Carolina. For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1;

(3) All students shall enter into a legal agreement and promissory note with the Authority to accept employment in public child welfare in exchange for receiving any funds, which agreement shall include stipulation that the student agrees to accept employment in rural or other need-based counties; and

(4) Any additional criteria that the Authority considers necessary to administer the program effectively, including:

- a. Consideration of the appropriate numbers of minority students and students from diverse socio-economic backgrounds to receive funds pursuant to this section;
- b. Consideration of what rural or other need-based areas of the State shall be considered appropriate for work after graduation pursuant to subdivision (3) of this subsection;
- c. Consideration of the academic qualifications of the individuals applying to receive funds; and
- d. Consideration of the commitment the individuals applying to receive funds demonstrate to the profession of social work.

(c) The Authority shall ensure that the loan amounts are limited as follows:

- (1) For a student pursuing a bachelors of social work degree, four thousand dollars ($4,000) per year for a maximum of four years; and
- (2) For a student pursuing a masters of social work degree, five thousand dollars ($5,000) per year for a maximum of two years.

(d) The Authority shall ensure that the following loan cancellations and repayment schedules apply to all funds distributed pursuant to this section:

- (1) The individual who graduates with a bachelors of social work degree or a masters of social work degree and who works for a public child welfare agency in a rural or other need-based area of North Carolina shall have that amount of the loan cancelled that is based on the amount of time employed and the number of academic years funds were received. One full year of employment shall cancel one academic year's loan, whether four thousand dollars ($4,000) or five thousand dollars ($5,000);
- (2) The individual who graduates with a bachelors of social work degree or a masters of social work degree and who works in public child welfare in a rural or other need-based area of North Carolina for the equivalent of the total number of academic years funds were received shall have the entire loan cancelled;
- (3) The individual who graduates with a bachelors of social work degree or a masters of social work degree and who does not work in public child welfare in a rural or other need-based area of North Carolina for any or all of the equivalent of the number of years funds were received shall repay the loan to the Authority according to a schedule prescribed in the promissory note, plus ten percent (10%) annual interest; and
- (4) The individual who does not graduate with a bachelors of social work degree or a masters of social work degree shall repay the loan according to a schedule prescribed by the Authority, not to exceed fifteen percent (15%) annual interest. In establishing a schedule and interest rate, the Authority shall take into consideration the reasons the individual did not graduate with a bachelors of social work degree or a masters of social work degree.

The Authority shall ensure that all repayments, including accrued interest, shall be placed in the Fund.

The Authority may forgive or reduce any loan repayment if the Authority considers that extenuating circumstances exist that would make repayment impossible.

(e) The State Education Assistance Authority, in consultation with the Department of Health and Human Services, shall adopt rules to implement the Social Workers' Education Loan Fund as described in this section. (1993 (Reg. Sess., 1994), c. 769, s. 17.16; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

ARTICLE 29.

The North Carolina School of Science and Mathematics.

§ 116-233. Board of Trustees; appointment; terms of office.

(a) There shall be a Board of Trustees of the School, which shall consist of 26 members:

(1) Twelve members who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district;

(2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina;

(3) Three members, ex officio, who shall be the chief academic officers, respectively, of constituent institutions. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief academic officers shall so serve, such designations to expire on June 30, 1989, and quadrennially thereafter;

(4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter;

(5) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;

(6) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and

(7) Two members appointed by the Governor.

(b) Appointed members of the Board of Trustees shall be selected for their interest in and commitment to public education and to the purposes of the School, and they shall be charged with the responsibility of serving the interests of the whole State. In appointing members, the objective shall be to obtain the services of the best qualified persons, taking into consideration the desirability of diversity of membership, including men and women, representatives of different races, and members of different political parties.

(c) No member of the General Assembly or officer or employee of the State or of the School or of any constituent institution of The University of North Carolina, or the spouse of any such member, officer or employee, shall be eligible to be appointed to the Board of Trustees; and any appointed trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, of the School, or of a constituent institution of The University of North Carolina, or whose spouse is elected or appointed to the General Assembly or becomes such an officer or employee, shall be deemed thereupon to resign from his or her membership on the Board of Trustees. This subsection does not apply to ex officio members.

(d) Members appointed under subdivisions (1) or (2) of subsection (a) of this section shall serve four-year terms. Eight of those terms shall expire June 30, 1993, and quadrennially thereafter, and eight of those terms shall expire June 30, 1995, and quadrennially thereafter. Only an ex officio member shall be eligible to serve more than two successive terms. Any vacancy in the membership of the Board of Trustees appointed under G.S. 116-233(a)(1) or (2) shall be reported promptly by the Secretary of the Board of Trustees to the Board of Governors of The University of North Carolina, which shall fill any such vacancy by appointment of a replacement member to serve for the balance of the unexpired term. Any vacancy in members appointed under G.S. 116-233(a)(5) or (6) shall be filled in accordance with G.S. 120-122. Any vacancy in members appointed under G.S. 116-233(a)(7) shall be filled by the Governor for the remainder of the unexpired term. Reapportionment of congressional districts does not affect the right of any member to complete the term for which the member was appointed.

(e) Of the initial members appointed under G.S. 116-233(a)(5), one member shall serve a term to expire June 30, 1987, and one member shall serve a term to expire June 30, 1989. Subsequent appointments shall be for four-year terms. The initial members appointed under G.S. 116-233(a)(6), shall be appointed for terms to expire June 30, 1987. Subsequent appointments shall be for two-year terms. The initial members appointed under G.S. 116-233(a)(7) shall be appointed for terms to expire January 15, 1989. Successors shall be appointed for four-year terms.

(f) Whenever an appointed member of the Board of Trustees shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present at three successive regular meetings of the Board, his or her place as a member of the Board shall be deemed vacant. (1985, c. 757, s. 206(b); 1991 (Reg. Sess., 1992), c. 879, ss. 1, 2; 1995, c. 490, s. 45; c. 509, s. 65.)

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

§ 116-234. Board of Trustees; meetings; rules of procedure; officers.

(a) The Board of Trustees shall meet at least four times a year and may hold special meetings at any time, at the call of the chairman or upon petition addressed to the chairman by at least four of the members of the Board.

(b) The Board of Trustees shall elect a chairman and a vice-chairman; no ex officio member may hold such an office.

(c) The Board of Trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233(a)(3), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233(a)(3) shall be reimbursed for travel expenses as provided by G.S. 138-6. (1985, c. 757, s. 206(b); 1995, c. 509, s. 66.)

§ 116-235. Board of Trustees; powers and duties.

(a) Academic Program. —

(1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade.

(2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the instructional day, and the number of instructional days in each term.

(b) Students. —

(1) Admission of Students. — The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be a legal resident of the State, as defined by G.S.116-143.1(a)(1); eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified rising high school juniors is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of rising high school juniors offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.

(2) School Attendance. — Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in

session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 3 misdemeanor. The Director of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(3) Student Discipline. — Rules of conduct governing students of the School shall be established by the Board of Trustees. The Director, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

(c) Personnel. —

(1) Faculty Members. — Members of the faculty of the School shall be exempt from the provisions of the State Personnel Act. The Board of Trustees shall adopt all policies and regulations governing the qualifications, criteria for employment, assignment, health requirements, terms and conditions of employment, compensation and benefits, and the supervision and management of all faculty members of the School, and such system of employment and employment security as the Board of Trustees may deem to be appropriate.

(2) Senior Administrative Officers. — The senior administrative officers of the School shall consist of a Director, as provided by G.S. 116-236, and such other senior academic and administrative officers as shall be selected and employed by the Board of Trustees. They shall be governed by such policies and regulations and provisions for compensation as the Board of Trustees may adopt, and shall be exempt from the State Personnel Act.

(3) Other Employees. — All other employees of the School shall be subject to the State Personnel Act and to such supplemental policies and regulations, not inconsistent therewith, as may be adopted by the Board of Trustees.

(4) All employees of the School shall be deemed to be employees of the State and shall be covered by all provisions of State law relevant thereto, including Chapter 97, Chapter 135, and Article 31A of Chapter 143 of the General Statutes.

(d) Finances, Property, Obligations. —

(1) The Board of Trustees shall develop, prepare, and present to the Board of Governors a recommended budget for the School, which shall be transmitted by the Board of Governors to the General Assembly.

(2) Subject to all applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Trustees may acquire, hold, convey or otherwise dispose of, and invest or reinvest any and all real and personal property, except that the Board of Trustees may not convey any of the land constituting the

campus, except for necessary easements, without the approval of the General Assembly. All power and authority exercised with regard to the acquisition, operation, maintenance, and disposition of real and personal property shall be subject to the provisions of Chapters 143 and 146 of the General Statutes except as provided in G.S. 116-238.

(3) The Board of Trustees is authorized to accept, receive, and use any federal funds, or aids, that may be made available by the federal government which, in the judgment of the Board of Trustees, would be beneficial to the operation of the School.

(4) The Board of Trustees is authorized to establish a permanent endowment fund as provided in G.S. 116-238.

(5) The lands and other property of the School shall be exempt from all kinds of public taxation, except as may be provided for by State law.

(6) The Board of Trustees may establish policies and regulations for the sale of goods and services, not inconsistent with the provisions of Article 11 of Chapter 66 of the General Statutes.

(e) Regulation of Traffic and Parking and Registration of Motor Vehicles. —

(1) Unless the context clearly requires another meaning, the following words and phrases have the meanings indicated when used in this subsection:
  a. "Board of Trustees" means the Board of Trustees of the North Carolina School of Science and Mathematics.
  b. "Campus" means that School property, without regard to location, which is used wholly or partly for the purposes of the North Carolina School of Science and Mathematics.
  c. "School property" means property owned or leased in whole or in part by the State of North Carolina and which is subject to the general management and control of the Board of Trustees of the North Carolina School of Science and Mathematics.

(2) Except as otherwise provided in this subsection, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of motor vehicles thereon are applicable to all streets, alleys, driveways, parking lots, and parking structure on School property. Nothing in this subsection modifies any rights of ownership or control of School property, now or hereafter vested in the Board of Trustees or the State of North Carolina.

(3) The Board of Trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the Board of Trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the Board of Trustees. The Board of Trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this section.

(4) The Board of Trustees may by ordinance provide for the registration of motor vehicles maintained or operated on

the campus by any student, faculty member, or employee of the School, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered motor vehicle on the campus when the vehicle is required by the ordinance to be registered.

(5) The Board of Trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students, faculty, and employees of the School and members of the general public attending schools, conferences, or meetings at the School, visiting or making use of any School facilities, or attending to official business with the School. The Board of Trustees may issue permits to park in these lots and garages and may charge a fee therefor. The Board of Trustees may also by ordinance make it unlawful for any person to park a motor vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle.

(6) The Board of Trustees may by ordinance set aside spaces in designated parking areas or facilities in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the Board of Trustees may install a system of parking meters and make it unlawful for any person to park a motor vehicle in a metered space without activating the meter for the entire time that the vehicle is parked, up to the maximum length of time allowed for that space. The meters may be activated by coins of the United States. The Board of Trustees may also install automatic gates, employ attendants, and use any other device or procedure to control access to and collect the fees for using its parking areas and facilities.

(7) The Board of Trustees may by ordinance provide for the issuance of stickers, decals, permits, or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of them.

(8) Violation of an ordinance adopted under any portion of this subsection is a Class 3 misdemeanor. An ordinance may provide that certain acts prohibited thereby shall not be enforced by criminal sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor.

(9) An ordinance adopted under any portion of this subsection may provide that violation subjects the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged. The Board of Trustees may establish procedures for the collection of these penalties and they may be enforced by civil action in the nature of debt. The Board of Trustees may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or upon repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle registration, and termination or suspension of enrollment in or employment by the School.

(10) An ordinance adopted under any portion of this subsection may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether the School does its own removal and disposal of motor vehicles or contracts with another person to do so, the School shall provide a hearing procedure for the owner. For purposes of this subdivision, the definitions in G.S. 20-219.9 apply.
  a. If the School operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
  b. If the School operates in such a way that it is responsible for collecting towing fees, it shall:
    1. Provide by contract or ordinance for a schedule of reasonable towing fees,
    2. Provide a procedure for a prompt fair hearing to contest the towing,
    3. Provide for an appeal to district court from that hearing,
    4. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
    5. If the School chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the School may destroy it.

(11) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the Board of Trustees is prima facie evidence that the vehicle was parked by:
  a. The person holding a School parking permit for the vehicle, or
  b. If no School parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the School pursuant to subdivision (3), above, or
  c. If no School parking permit has been issued for the vehicle and the vehicle is not registered with the School, the person in whose name it is registered with the North Carolina Division of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subdivision (11) applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the Board of Trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

(12) The Board of Trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(13) All ordinances adopted under this subsection shall be recorded in the minutes of the Board of Trustees and copies thereof shall be filed in the office of the Secretary of State. The Board of Trustees shall provide for printing and distributing copies of its traffic and parking ordinances.

(14) All moneys received pursuant to this subsection shall be placed in a trust account of the School and may be used for any of the following purposes:
  a. To defray the cost of administering and enforcing ordinances adopted under this subsection;
  b. To develop, maintain, and supervise parking areas and facilities;
  c. To fulfill other purposes related to parking, traffic, and transportation on the campus.

(f) Status as a Body Politic and Corporate. — The Board of Trustees of the School is hereby made a body corporate and politic, to be known and distinguished as "The Board of Trustees of the North Carolina School of Science and Mathematics." The Board of Trustees shall be capable in law to sue and be sued and of prosecuting and defending suits for or against the corporation, subject to the provisions of G.S. 114-2 and G.S. 147-17.

(g) The Board of Trustees may adopt such other policies and regulations as it may consider necessary and expedient for the operation and management of the affairs of the School, not inconsistent with the provisions of this Article.

(h) The Board of Trustees shall keep the Board of Governors fully and promptly informed, through the President of The University of North Carolina, concerning activities of the Board of Trustees, including notices of meetings and copies of the minutes of all such meetings. (1985, c. 757, s. 206(b); 1993, c. 539, ss. 896, 897; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 15.1.)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

ARTICLE 30.

[Western] North Carolina Arboretum.

§ 116-243. Board of directors established; appointments.

A board of directors to govern the operation of the Arboretum is established, to be appointed as follows:

(1) Two by the Governor, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms;

(2) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms;

(3) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms;

(4) The President of The University of North Carolina or his designee to serve ex officio;

(5) The chancellors, chief executive officers, or their designees of the following institutions of higher education: North Carolina State University, Western Carolina University, The University of North Carolina at Asheville, Mars Hill College, and Warren Wilson College, to serve ex officio;
(6) The President of Western North Carolina Arboretum, Inc., to serve ex officio;
(7) Six by the Board of Governors of The University of North Carolina, initially, three for one-year terms, and three for three-year terms. Successors shall be appointed for four-year terms. One shall be an active grower of nursery stock, and one other shall represent the State's garden clubs;
(8) The executive director of the Arboretum and the Executive Vice President of Western North Carolina Development Association shall serve ex officio as nonvoting members of the board of directors.

All appointed members may serve two full four-year terms following the initial appointment and then may not be reappointed until they have been absent for at least four years. Members serve until their successors have been appointed. Appointees to fill vacancies serve for the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms begin July 1, 1986.

The chairman of the board of directors shall be elected biennially by majority vote of the directors.

The executive director of the Arboretum shall report to the board of directors. (1985 (Reg. Sess., 1986), c. 1014, s. 98; 1995, c. 490, s. 63.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Chapter 116B.

Escheats and Abandoned Property.

Article 2.

Abandoned Property.

Sec.
116B-11. Property subject to custody and control of the State.
116B-12. Property held by financial institutions.
116B-13. Property held by life insurers.
116B-22. Certain intangible property.
116B-23. Exclusion for forfeited reservation deposits.
116B-24 through 116B-26. [Reserved.]

Article 3.

Administration of Abandoned Property.

Sec.
116B-28. Notice by holders to owners required.
116B-29. Report of abandoned property by holder to Treasurer.
116B-31. Payment or delivery of abandoned property.
116B-34. Periods of limitation not a bar.

ARTICLE 2.

Abandoned Property.

§ 116B-10. Definitions.

CASE NOTES

Layaway Funds Are Subject to This Chapter. — As long as a customer may get a refund, merely possession of the funds, not ownership, has been ceded. The customer retains an equitable interest in the money. The retention of a legal or an equitable interest in the funds makes the customer the statutory owner of the layaway payments. As a holder, not an owner, the layaway funds within the store's control are subject to the escheat statute. Rose's Stores, Inc. v. Boyles, 106 N.C. App. 263, 416 S.E.2d 200, cert. granted, 332 N.C. 484, 421 S.E.2d 356 (1992).

§ 116B-11. Property subject to custody and control of the State.

Personal property that is deemed unclaimed or abandoned under this Chapter is subject to the custody and control of the State if it is:

(1) Tangible. — Tangible and physically located within the State; or
(2) Intangible. — Intangible, and any of the following applies:
  a. The last known address of the owner, as shown by the records of the holder, is within the State.
  b. The last known address of the owner as shown by the records of the holder is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of the property, and either of the following applies:
    1. The domicile of the holder is within the State.
    2. The intangible property was issued by this State, a political subdivision of this State, a business association, financial institution, or another person or entity, incorporated, organized, created, or otherwise located in this State.
  c. No address of the owner appears on the records of the holder and either of the following applies:

1. The domicile of the holder is within the State.
2. The intangible property was issued by this State, a political subdivision of this State, a business association, financial institution, or another person or entity, incorporated, organized, created, or otherwise located in this State.

d. No address of the owner appears on the records of the holder and the domicile of the holder is not within the State, but it is proved that the last known address of the owner is in the State.

e. It is a sum payable on a money order, a traveler's check, or a similar written instrument and one of the following applies:

1. The instrument was purchased within the State, as shown by the records of the holder.
2. The place of purchase of the instrument is not shown in the records of the holder and the holder's principal place of business is within the State.
3. The place of purchase of the instruments, as shown by the records of the holder, is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of the property, and the holder's principal place of business is within the State. (1979, 2nd Sess., c. 1311, s. 1; 1993, c. 541, s. 1.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 1, which amended this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-12. Property held by financial institutions.

(a) Most Deposits and Funds. — Any demand, savings, or matured time deposit, other than a certificate of deposit, in a financial institution or any funds paid toward the purchase of shares or another interest in a financial institution shall be presumed abandoned if the financial institution is unable to locate the owner and if, within the preceding five years, as to any demand deposit, or a savings or time deposit or interest having a value of one thousand dollars ($1,000) or less, or within the preceding 10 years, as to any such savings or time deposit or interest having a value of more than one thousand dollars ($1,000), the owner has not:

(1) Increased or decreased the amount of the deposit, shares, or claim or presented to the holder the passbook, evidence of deposit, or other appropriate record for the crediting of interest or dividends;

(2) Corresponded in writing with the holder concerning the deposit, shares, or claim;

(3) Otherwise indicated an interest in the deposit, shares, or claim as evidenced by a writing on file with the holder; or

(4) Maintained another account at the same financial institution that complies with (1), (2), or (3) above.

The financial institution shall make reasonable efforts to locate the owner and to determine whether its records disclose a different address for the owner.

(a1) Certificates of Deposit. — A certificate of deposit issued by a financial institution shall be presumed abandoned if the financial institution is unable to locate the certificate's owner and if, within the 10-year period beginning on the initial maturity date of the certificate, the owner did not take any of the actions listed in subsection (a) of this section. The financial institution shall make the same efforts to locate a certificate's owner as it would make under subsection (a) if the certificate were a demand deposit.

(b) Written Instruments. — Any sum payable on a check certified in the State or on any written instrument issued in the State on which a financial institution is directly liable shall be presumed abandoned if, within 10 years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

(1) Negotiated the instrument;
(2) Corresponded in writing with the financial institution concerning it; nor
(3) Otherwise indicated an interest by a writing on file with the financial institution.

(c) Traveler's Checks. — Any sum payable on a traveler's check, money order or a similar written instrument on which a financial institution or other business association is directly liable shall be presumed abandoned if, within 15 years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

(1) Negotiated the instrument;
(2) Corresponded in writing with the financial institution or other business association concerning it; nor
(3) Otherwise indicated an interest as indicated by a writing on file with the financial institution or other business association.

(d) Safe Deposit Box. — Any funds or other personal property, tangible or intangible, contained in or removed from a safe deposit box or other safekeeping repository shall be presumed abandoned if the owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the State Treasurer.

(e) Charges, Interest or Dividends on Abandoned Property. —

(1) Reasonable service charges, not to exceed the charges levied against similar active deposits or accounts, may be imposed on inactive deposits or accounts until the date on which the amount of the deposits or accounts must be remitted to the Treasurer under G.S. 116B-31.
(2) Interest or dividends due on inactive deposits, accounts, funds, or shares shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-31. (1979, 2nd Sess., c. 1311, s. 1; 1985, c. 215, s. 1; 1989, c. 114, s. 1; 1993, c. 541, s. 2.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 2, which amended this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-13. Property held by life insurers.

(a) Funds Owed under a Policy or Contract. — Any funds held or owing by a life insurer that are due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated shall be presumed abandoned if they have not been claimed or paid within five years after becoming due or payable as established from the insurer's records. Funds payable according to the insurer's records are deemed due and payable although the policy or contract has not been surrendered as required. The insurer shall make reasonable efforts to locate the insured or annuitant and to determine whether its records disclose a different address for the insured or annuitant.

(b) Presumption of Address of Beneficiary. — If a person other than the insured or annuitant is entitled to the funds and no address of the person is known to the insurer or if it is not definite and certain from the records of the insurer what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurer.

(c) Presumption of Maturity. — A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured, and the proceeds are deemed to be due and payable if the policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has, within the preceding five years, assigned, readjusted or paid premiums on the policy, negotiated a dividend check, made payments on a loan, or corresponded in writing with the life insurer concerning the policy.

(d) Negotiable Instruments. — Any sum for the payment of a claim under an insurance policy or contract, which sum is payable on a negotiable instrument on which the insurer is the maker or drawer shall be presumed abandoned if, within five years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

(1) Negotiated the instrument;
(2) Corresponded in writing with the insurer concerning it; nor
(3) Otherwise indicated an interest by a writing on file with the insurer. (1979, 2nd Sess., c. 1311, s. 1; 1985, c. 666, s. 72; 1993, c. 541, s. 3.)

Editor's Note. — Session Laws 1993, c. 541, s. 10, provides that c. 541, s. 3, which amended this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-21. Property held in the ordinary course of business.

CASE NOTES

Property Subject to Escheat. — Property which is held in the ordinary course of business is deemed abandoned and subject to escheat when it is: 1) any item of property, not otherwise specifically covered under the escheat statute, 2) in the possession of one not the owner, and 3) held for five years after the sum becomes payable or distributable. Rose's Stores, Inc. v. Boyles, 106 N.C. App. 263, 416 S.E.2d 200, 332 N.C. 484, 421 S.E.2d 356 (1992).

Demand for Return of Item Not Required. — This chapter does not require the customer to make a demand for the return of the item before it is deemed to be abandoned property. In fact, the statute clearly indicates that property is considered abandoned after five years have passed since the last assertion of ownership. Rose's Stores, Inc. v. Boyles, 106 N.C. App. 263, 416 S.E.2d 200, cert. granted, 332 N.C. 484, 421 S.E.2d 356 (1992).

§ 116B-22. Certain intangible property.

(a) Property. — Securities, principal, interest and dividends accruing to the securities, and other property that is subject to the custody and control of the State by application of G.S. 116B-11(2)b.2. or (2)c.2. shall be presumed abandoned if, within the shorter of the following periods after the date set by the issuer of the property for paying or delivering the property to its owner, the owner has not claimed the property or corresponded in writing with the holder:

(1) Five years.

(2) The time period set by another state for taking custody of the property pursuant to that state's unclaimed property laws.

(b) Income and Charges. — Any interest, dividends, or other earnings due on property presumed abandoned under subsection (a) of this section must be paid during the period prior to abandonment. Charges that are authorized by statute or by a contract may be deducted from the property during that period. (1993, c. 541, s. 4.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 makes this section effective December 1, 1993.

Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 4, which enacted this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-23. Exclusion for forfeited reservation deposits.

A forfeited reservation deposit is not unclaimed or abandoned property. For the purposes of this section, the term "reservation deposit" means an amount of money paid to a business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term does not include an application fee, a utility deposit, or a deposit made toward the purchase of real or personal property. (1996, 2nd Ex. Sess., c. 18, s. 7A(a); 1997-279, ss. 1, 2.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 7A(c), made this section applicable to funds held or collected by business associations on or after July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 7A(b), provides that the Legislative Research Commission shall study the implementation and enforcement of Chapter 116B and shall report its findings and recommendations to the 1997 General Assembly.

Session Laws 1996, Second Extra Session, c. 18, s. 7A(c), provides that this section expires June 30, 1997, but all funds collected or held by business associations before June 30, 1997, shall not escheat.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-279, s. 1, amended subsection (c) of s. 7A of c. 18 of the Session Laws of the Second Extra Session of 1996 to delete the expiration date of June 30, 1997 for this section, and to delete "funds collected or held by business associations before June 30, 1997 shall not escheat." Session Laws 1997-279, s. 3, provides: "All property or funds held as forfeited reservation deposits prior to the effective date of this act pursuant to G.S. 116B-23 shall not escheat."

Effect of Amendments. — The 1997 amendment, effective July 9, 1997, rewrote this section.

§§ 116B-24 through 116B-26: Reserved for future codification purposes.

Article 3.

Administration of Abandoned Property.

§ 116B-28. Notice by holders to owners required.

(a) Insurers. — Every insurer required to file a report pursuant to G.S. 116B-29 shall determine, prior to March 1 of each year, all owners who, of the preceding December 31, appear entitled to property having a value of fifty dollars ($50.00) or more and presumed abandoned under this Chapter and, on or before March 1, shall mail, first class postage prepaid, a notice to the last known address of each owner.

(b) Other Holders. — Every holder, other than insurers, required to file a report pursuant to G.S. 116B-29 shall determine, prior to November 1 of each year, all owners who, as of the preceding June 30, appear entitled to property having a value of fifty dollars ($50.00) or more and presumed abandoned under this Chapter and, on or before November 1, shall mail, first class postage prepaid, a notice to the last known address of each owner. A holder need not mail a notice to an owner for which the holder has no address.

(c) Contents. — Each notice required by this section shall contain all of the following:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that unless the owner presents a satisfactory proof of claim to the holder by the following February 1, if the holder is not an insurer, or October 1, if the holder is an insurer, the holder will send the property to the Treasurer, to whom all further claims must be directed.

(d) Charges for Notices. — The holder shall be entitled to deduct from the property of each owner to whom notice is sent an amount not to exceed fifty cents (50¢) to defray the expense of mailing the notice. If the property is other than cash in the possession of the holder, the holder may submit to the Escheat Fund, with the certification required by subsection (e) of this section, a sworn itemized statement of charges for notices mailed, not to exceed fifty cents (50¢) per notice, which shall be paid by the Escheat Fund within 30 days following receipt of the statement. The Escheat Fund shall charge the accounts of the respective owners with any charges so paid to holders.

(e) Certification of Mailing; Penalties; Right of Owners. — Every holder filing a report pursuant to G.S. 116B-29 shall certify to the Treasurer therewith that the notices required by subsections (a) and (b) of this section have been mailed to the last known address of every owner named in the report. Failure or refusal to certify after written demand by the Treasurer or filing a false certification shall be a Class 3 misdemeanor, punishable, upon conviction, only by a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000) as the court, in its discretion, shall determine. Any owner who has suffered loss or damage by reason of the failure of a holder to mail the notice required by this section may recover actual loss or damage from the holder in an appropriate action at law.

(f) Other Notice. — All holders shall make reasonable efforts to locate and communicate with the owner prior to filing the report required by G.S. 116B-29 in order to prevent abandonment from being presumed, including the exercise of due diligence to determine whether the holder possesses a different address for the owner.

(g) Repealed by Session Laws 1993, c. 541, s. 5, effective December 1, 1993. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 4-6; 1993, c. 539, s. 898; c. 541, s. 5; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 5, which amended this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

Session Laws 1993, c. 539, s. 898, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 116B-29. Report of abandoned property by holder to Treasurer.

(a) Reports to Treasurer. — Every holder of property, tangible or intangible, presumed abandoned under this Chapter shall report to the State Treasurer with respect to that property.

(b) Contents. — The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars ($50.00) or more;

(2) In the case of unclaimed funds of an insurer, the full name of the insured or annuitant and his last known address according to the insurer's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars ($50.00) each may be reported in the aggregate;

(4) A certification that the property reported has been held for the period required by Article 2 of this Chapter; and

(5) Other information which the Treasurer prescribes by rule.

(c) Names of Prior Holders. — If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) Time of Filing. — The report of holders other than insurers shall be filed before March 1 of each year and cover property presumed abandoned as of the prior June 30. The report of insurers shall be filed before November 1 of each year and cover property presumed abandoned as of the prior December 31. The Treasurer, in his discretion, may postpone the reporting date for a period not exceeding six months upon written request by any person required to file a report.

(e) Verification. — Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer. Notwithstanding the above, any person authorized to bind the appropriate entity may make this verification.

(f) Negative Report. — If a holder receives a report form from the State Treasurer and holds no abandoned property, then a negative report must be filed. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 7, 8; 1983, c. 204, s. 3; 1985, c. 215, ss. 2, 3; 1987, c. 163, ss. 1-3; 1993, c. 541, s. 6.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 6, which amended this section, applies to property held before, on or after the effective date, regardless of when the property became or becomes presumptively abandoned.

§ 116B-31. Payment or delivery of abandoned property.

(a) Due Date. — A holder shall remit or deliver to the Treasurer with the report filed under G.S. 116B-29 any property required to be included in the report. These remittances shall be made payable to the Treasurer.

(b) Repealed by Session Laws 1993, c. 541, s. 7, effective December 1, 1993.

(c) Tangible Personal Property. — Prior to the delivery of any tangible personal property to the Treasurer, the holder shall report to the Treasurer the nature, condition and approximate value of each article of such property. The Treasurer may determine that delivery of specific tangible personal property is not in the best interest of the State, either because the sum or value is too small or for other good reason. The Treasurer shall notify the holder of the property of his determination and may refuse to accept delivery and custody of that property. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 14; 1987, c. 163, s. 6; 1993, c. 541, s. 7.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 7 applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-34. Periods of limitation not a bar.

The expiration of any period of time specified by statutes, contract, or court order, during which a claim may be made or an action or a proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report under this Chapter or to pay or deliver abandoned property to the Treasurer. (1979, 2nd Sess., c. 1311, s. 1; 1993, c. 541, s. 8.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 8 applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

Chapter 116C.

Editor's Note. — The legislation and annotations affecting Chapter 116C have been included in a recently published replacement chapter.

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

December 1, 1997

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1997 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

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Attorney General of North Carolina

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